REVIEW

OF THE

EVIDENCE TAKEN ON CHARGES AGAINST

RICHARD BUSTEED

U. S. DISTRICT JUDGE FOR ALABAMA,

—BY—

ROBERT H. SMITH,

OF MOBILE;

WITH COPIES OF CHARGES.

SECOND EDITION, REVISED AND ENLARGED.

MOBILE, ALA.

1869.

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CHARGES AND SPECIFICATIONS

AGAINST

RICHARD BUSTEED,

U. S. JUDGE OF THE DISTRICT COURTS OF THE UNITED STATES IN ALABAMA.

BY HENRY C. SEMPLE.

CHARGE I.

That Richard Busteed, Judge of the District Courts of the United States for the State of Alabama, did wilfully and corruptly, for his own gain and pleasure, conduct the affairs of his office of Judge, without regard to justice, or his official oath and duty, in the State of Alabama, from the fall of 1865 to the first of June, 1868.

Specification 1st.

That Richard Busteed, while exercising the powers of his office in Alabama, in the spring of 1866, did undertake to act, and did act, as the counsel, agent, and legal adviser of one Jacob Stanwood, then of the City of Boston, Mass., now of Lowndes County, Alabama, in and about the negotiation by the said Stanwood for the purchase from one James A. Turner of a tract of land in the County of Lowndes, State of Alabama; that the said land was purchased about that time by the said Stanwood from the said Turner, upon the legal opinion of the said Busteed as to the sufficiency of the title, and his private opinion, after an examination of the plantation, as to the reasonableness of the price demanded therefor; yet, the said Stanwood having become dissatisfied with the said purchase, and anxious to procure a recission of the sale, the said Richard Busteed did unlawfully consult with said Stanwood in relation thereto, and did advise him to employ certain counsel named by him, and to proceed in the District Court of the United States for the Middle District of Alabama. That thereupon the said Stanwood filed a bill of complaint in said Court against the said Turner, praying an injunction to restrain the collection by Turner of a portion of the purchase money, and that the contract of purchase so made by him under the advice and counsel of said Judge should be rescinded; and the said Judge corruptly and unlawfully assumed jurisdiction of said cause, and granted an injunction therein in the spring of 1868.

Witnesses as to Specification 1st: James A. Turner, Baltimore, Md.; J. M. Dillehay, Danville, Ky.; Jacob Stanwood, Lowndes County, Ala.; William Turner, Montgomery, Ala.; John A. Elmore, Montgomery, Ala.

Specification 2d.

That he did make and act upon a corrupt agreement with one James Q. Smith, unlawfully and under color of fees and allowances to be awarded to said Smith by his orders, to obtain large sums of money from the people of Alabama and from the United States, with a view of appropriating it to the use of himself, the said Busteed; and that he did thus obtain large sums of money, the property of the United States or some of the people thereof.

Witnesses to specification 2d: Josiah Morris, Montgomery, Ala.; E. E. McCloskey, Knoxville, Tenn.; Barna McKinney, Montgomery, Ala.; The Bar of Montgomery and Selma generally.

Specification 3d.

That the said Richard Busteed, while Judge of the District Courts of the United States for Alabama, did, as such Judge, render a judgement or decree in a cause pending before him in the District Court of the United States for the Middle District of Alabama in favor of the U. S., and an informer, (not named in the proceedings,) against one Josiah Morris and one J. F. Johnson, for the sum of $30,000, or thereabouts; and, upon being urged by said Morris to act upon a writ of error or appeal bond which he offered for his approval, did say to the said Morris, in a room occupied by him, the said Busteed, in the Custom House, at Mobile—one Jacob Wilson, a body servant of said Judge, and Acting Deputy Marshal, being at the time present—"you ought to settle this case," or words to that effect; and, upon the said Morris saying he was tired of it, and was willing to pay the value of the cotton, the subject of the controversy, $5,000 or $5,500, the said Judge then remarked, "You ought to settle this with Smith," (the District Attorney,) and, on Morris replying that he could have no intercourse with Smith, the Judge said that he would make Smith settle it if he could see him; and, being urged by Morris and Jacob Wilson, who was present, to go to Montgomery, he finally agreed to go for the purpose indicated, and did go. That Morris retired from the Judge's room followed immediately by said Wilson, who told him that the Judge wanted the money to take up with him to settle that case, and thereupon the said Morris delivered him checks to bearer to the sum of $5,000 or $5,500, which went into the hands of the said Busteed, and was corruptly received and retained by him for his own use.

Witnesses to Specification 3d: J. Morris, Montgomery, Alabama; James R. Powell, Montgomery, Alabama; J. F. Johnson, Montgomery, Alabama; Samuel F. Rice, Montgomery, Alabama; M. J. Saffold, Washington, D. C.

Specification 4th.

Same as 3d, down to the recital of the fact of the receipt of the money by Jacob Wilson, and then add: And the said Richard Busteed well knowing that the said money had been received and obtained by the said Wilson under the circumstances stated, and that it was known to the community, did retain the said Wilson in confidential employment about his person by way of advertising for bribes.

Same witnesses as 3d Specification with Wm. P. Chilton, Montgomery, Alabama.

Specification 5th.

That the sum of money mentioned in the 3d Specification as having been decreed against the said Morris and Johnson, having been paid by the said Morris to John Hardy the U. S. Marshal, the said Richard Busteed, well knowing that the same belonged of right either to the U. S., or to said Morris, corruptly ordered in vacation one half of the sum to be paid to some other person or persons, and procured the same to be so paid by the Marshal, in fraud of the rights of the U. S., or of the said Morris, the said Morris having executed at the time and filed in the Court a writ of error bond, with sufficient sureties in double the amount of said judgment or decree, to obtain a supersedeas of said judgement or decree.

Witnesses to the 5th Specification: John Hardy, Montgomery, Alabama; E. E. McCloskey, Knoxville, Tennessee; Samuel F. Rice, Montgomery, Alabama; Wm. P. Chilton, Montgomery, Alabama; J. Morris, Montgomery, Alabama.

Specification 6th.

That Richard Busteed, acting as Judge of the District Court of the United States for the State of Alabama, and having as such Judge a certain authority over Registers of Bankruptcy, nominated by Chief Justice Chase, did wilfully and corruptly require and demand of George E. Spencer and ——— Burke, who had been nominated as Registers in Bankruptcy in said State, by the said Chief Justice, that as a condition for being permitted to exercise the functions of the offices to which they had been so nominated, they should severally agree to divide with him the emoluments of said offices, or pay to him a considerable sum of money, and did corruptly receive the same.

Witnesses to the 6th Specification: George E. Spencer, Ala. Address not known; ——— Burke, Ala. Address not known.

Specification 7th.

That Richard Busteed, claiming as Judge of the United States District Court for the Northern District of Alabama, the power of appointment or removal of the Clerk of the said Court, did wilfully and corruptly require and receive of L. W. Day, Clerk of said Court, a sum of money or a share of the fees of the said office, as a condition of his appointment to, or retention in said office.

Witness: L. W. Day, Clerk, &c., Huntsville, Ala.

CHARGE II.

That Richard Busteed, United States Judge of the District Courts of Alabama, did, in his capacity as Judge, sell, delay, and deny justice to the citizens of the United States, in violation of his official oath and duty as Judge; and instead of using the powers of his office to establish justice, exercised them to hinder, deny, and delay justice, to the scandal and shame of all good citizens of the United States.

Specification 1st.

That the Confederate States, (so-called,) having acquired by purchase and conveyance from the owners thereof, many tracts of land in the State of Alabama, for the purpose of erecting arsenals, foundries, and other works, to prosecute a war against the United States, and among these pieces of property, having acquired title by conveyance and purchase from one Phillip I. Weaver of a certain tract of land in or near Selma, Alabama, and having entered into possession thereof, and occupied and used the same for the purpose of a Naval foundry; the said property with all other property of the so-called Confederate States in the State of Alabama, by the convention between Lieutenant General Richard Taylor, and Major General E. R. S. Canby, became the property of the United States; and the United States by the —— section of the act of Congress approved the —— day of July, 1866, enacted that such property should be taken possession of by the Commissioner of the Bureau of Refugees, Freedmen, and abandoned lands, and disposed of for purposes therein specified; and Brevet Major General Wager Swayne, Assistant Commissioner, by virtue of said act, entered upon and took possession of the said tract of land and other lands similarly situated; and the said Richard Busteed, Judge as aforesiad, well knowing the said facts, and corruptly designing to defeat the purposes of the said act, and to divert the said property from the uses specified by said act, did conspire and agree with one James Q. Smith, then District Attorney of the United States, that he should file an information on the part of the United States, and an informer not named in the information, for the condemnation of said tract of land and other such tracts in his Court, and that the same should be condemned as forfeited to the United States, under the act of Congress for the confiscation of property used or employed in aid of the rebellion, and the property be thus frittered away in costs and parted and divided among the creatures of the said Judge; and in pursuance of said agreement the said tract of land was so proceeded against and condemned, together with others similarly situated, and on complaint being made to said Judge he falsely alleged to the Assistant Commissioner that he had no notice of the said section of the act of Congress, though it had been specially called to his attention by the counsel employed by General Swayne, and copied into the brief furnished to the Judge by him.

Witnesses: Major General Swayne, U. S. A., Wm. P. Chilton, New York.

CHARGE III.

Criminal ignorance of the law by Richard Busteed, Judge of the United States District Courts of the State of Alabama.

Specification 1st.

That charging the Grand Jury at the May Term, 1868, of said last mentioned Court, he sought to induce them to find an indictment for *libel* against some person or persons who had called the attention of the public to his official corruption.

CHARGE IV.

That Richard Busteed, United States District Judge for Alabama, did corruptly decide cases brought before him as such Judge, contrary to what he knew to be the law, and from personal, pecuniary, or other base motives.

Specification 1st.

In this, that in the case of Nickerson vs. Smith Cullum, George Holmes and William Knox, sued as late partners composing the firm of S. Cullum & Co., Bankers, in the District Court of the United States for the Middle District of Alabama, at the Spring Term, 1866, of said Court, which was an action brought by the Plaintiffs against the Defendants to recover the amount of a bill of exchange sent by them to the Defendants for collection in the spring of 1861, and which was paid to them at maturity, in April, 1861, by the acceptor, but the proceeds were not remitted. The proof in the case was clear and not controverted that the Defendants received the bill in the usual course of their business as Bankers; that it was paid at maturity, and that the Defendants were partners at the time of its receipt and payment, and no special defence whatever was set up by said Knox, but the said Knox was at that time an intimate friend of said Busteed, who frequently sojourned at Knox's house. Upon the foregoing evidence said Busteed, corruptly and to favor Knox, charged the jury, that if they believed the evidence, they must find *for the Plaintiffs*, as against Cullum and Holmes, and *for the Defendant Knox*, and the jury rendered a verdict accordingly.

Witnesses: J. T. Holtzclaw, Montgomery, Alabama; D. S. Troy, Montgomery, Alabama.

Specification 2d.

In this, that in the case of Martin & Graydon vs. Rose Morgan, as administratrix of James Morgan, deceased, in the said Court at the Spring Term, 1867, thereof, the Defendants pleaded "*ne unques administratrix*," that in fact she was not the administratrix of James Morgan, deceased, when the suit was brought, the action being founded upon a contract or undertaking of said James Morgan before his death, to which the Defendant, who was his widow, was not a party. The said Busteed corruptly decided that the Plaintiff was not bound to prove that the Defendant was in fact the administra-

trix of James Morgan, deceased, and, on proof of the debt against him, (James Morgan,) charged the jury to render a verdict for the Plaintiff, which was accordingly done.

Witnesses: D. S. Troy, Montgomery, Alabama; Wm. P. Chilton, New York.

Specification 3d.

In this, that in the case of Harper vs. Graves and others, at the Spring Term, 1867, of said Court, which was an action under the statutes of Alabama in the nature of an action of ejectment, brought to recover possession of certain lands from the Defendants, who were the temporary tenants in possession under Mrs. Amaranth L. Gayle, who claimed title to the land, the said Busteed corruptly refused to permit the landlord of said tenants to be made a party Defendant to said suit, and corruptly refused to consider or hear evidence of her title to said land, or of her right to the possession thereof, her right being clear and undisputed under the statutes of Alabama, (by virtue of which the action was brought,) and charged the jury in said cause, that they must find a verdict for the Plaintiff, which they accordingly did, (the said Busteed having arbitrarily and corruptly announced from the bench previously that he would *imprison any juror* who should presume to find a verdict contrary to his charge,) and thereupon a judgment was rendered, upon which a writ of possession issued, and an aged and helpless lady was turned out of a house and home, to which her title was unquestionable.

Witnesses: D. S. Troy, Montgomery, Alabama; T. H. Watts, Montgomery, Alabama.

Evidence.—Record of the Court in said case.

Specification 4th.

That in the case of the United States and informer vs. 192 bales of cotton, Josiah Morris and others, adverse claimants, tried at the Fall Term, 1867, of said Court, the said Busteed corruptly refused to hear evidence of the title of said Morris to said cotton, well knowing the said evidence to be legal and relevant.

Witnesses: Samuel F. Rice, Montgomery, Alabama; W. P. Chilton, New York; A. Martin, Montgomery, Alabama; D. S. Troy, Montgomery, Alabama.

Members of the Montgomery Bar, and others attending the Court.

CHARGE V.

That Richard Busteed, United States Judge of the District Courts for the State of Alabama, did corruptly combine and conspire with James Q. Smith, then United States District Attorney, and John Hardy, then United States Marshal, to oppress, defraud, and extort money from parties litigant in the District Court of the United States for the Middle District of Alabama, under color of and by virtue of their respective offices as Judge, Marshal and Attorney of said Court.

Specification 1st.

In this, that said James Q. Smith as District Attorney of the United States as aforesaid, immediately after entering upon the duties of said office, to wit: in the months of August, September and October, A. D., 1865, filed a large number of libels and informations in said Court, to wit: about one thousand, against the estate, property and effects of different individuals, alleging the property, estate and effects of said persons to be subject to seizure and confiscation, by reason of the participation of the owners thereof in the rebellion, and that said persons, by reason of owning more than twenty thousand dollars' worth of property, were not embraced in the President's Proclamation of Amnesty of May 29, 1865; upon which information notices issued by the Clerk of said Court were served by the said Marshal on the said persons against whom the same were filed, and in some cases publication was made by the Marshal, but in no instance was the property of any such person actually seized or taken into custody by the said Marshal—many of said persons against whose property said libels or informations were so filed as aforesaid were specially pardoned by the President of the United States before the service of such notice by the Marshal, and the remainder of them were so pardoned shortly after the service of such notice upon them, and all of said cases which have been disposed of or were dismissed on payment of costs—no services were rendered in said cases except as above stated—yet the said Richard Busteed, well knowing the premises, made an order, as Judge of said Court, at the November Term, 1865, of said Court, that in each of said cases the defendant should pay cost as follows: on the value of the property, estate and effects, if not more than $20,000, one per cent.; if more than $20,000, one-half of one per cent. on the excess beyond $20,000 up to $30,000; and one-fourth of one per cent. on all over $30,000, in addition to the fees of the Clerk of the Court for issuing process, and Attorney's and Printer's fees, and to the Marshal for serving notice, whereby each of said parties were compelled to pay, and did pay, to said James Q. Smith, or to said Hardy, a large sum, varying from one hundred and fifty to five hundred dollars, amounting, in the aggregate, to a large sum, to wit, two hundred thousand dollars, of which sum a large part, over and above the lawful fees of said Smith and Hardy, to wit, one hundred thousand dollars, was retained by them, with the knowledge and consent of said Richard Busteed, and either appropriated to their own use or shared with said Busteed.

Witnesses: Fr. Bugbee, U. S. District Attorney, and the Dockets and Minutes of the U. S. District Court for the Middle District of Alabama, at Montgomery, since the close of the war, and Records of the office of the Secretary of the Interior, and of the Treasury, and all the parties defendants in said causes.

Specification 2d.

In this, that said Richard Busteed, corruptly combining and con-

spiring as aforesaid with said John Hardy, then Marshal of the United States for the Middle District of Alabama, made an order allowing to said Hardy, in addition to the fees allowed by law, a commission of ten per centum on the proceeds of all sales of confiscated property made by him as marshal for auctioneer's fees, under and by virtue of which order and authority the said Hardy retained for auctioneer's fees in the case of the United States vs. 192 Bales of Cotton in said Court, in addition to all fees and commissions allowed by law, a large sum, to wit, $1,700 as auctioneer's fees for selling said cotton under the decree of said Court in said cause.

And in the case of H. A. Nichols vs. J. P. Steele and W. J. Stoddard in said Court, retained, in addition to the fees and commissions allowed by law, $120 as auctioneer's fees, the same being ten per centum on $1,200 collected by him by sales of land under execution issued in said cause ———, and a like commission of ten per centum in addition to the fees and commissions allowed by law in all other cases of sales of property confiscated to the United States made by him as such Marshal ———, such illegal commissions amounting in the aggregate to a large sum, to-wit, many thousand dollars; all of which was done with the knowledge and approbation, and under and by virtue of the authority of said Richard Busteed, as judge as aforesaid.

Witnesses: Peter Hamilton, Mobile; D. S. Troy, Montgomery, as also returns of sales made by said Hardy in cases above stated, and in many other cases in the Middle District of Alabama.

Specification 3d.

In this, that said Richard Busteed as such Judge corruptly permitted the said James Q. Smith, as Attorney as aforesaid, to prosecute suits in said Court on behalf of the United States, and an informer without disclosing the name of such informer, and refused to require the said Smith to disclose the name of the informer in any case; and that in the case of the United States vs. Josiah Morris and J. F. Johnson in said Court, the same being a proceeding by information on behalf of the United States and an informer, whose name was not stated in the information, against the Defendants, for a conversion of certain cotton, which had once belonged to the Confederate States, and was alleged to have become the property of the United States by virtue of the surrender of General Richard Taylor, and of the laws of the United States in such cases provided, the said Richard Busteed, having refused a jury trial to the Defendants, rendered judgment against them for over thirty-one thousand dollars; and when said Defendants prayed a writ of error from said judgment, and offered a bond to supersede the same with good and sufficient securities, in double the amount of said judgment, the said Richard Busteed, as Judge as aforesaid, corruptly and with the intent wrongfully to extort said sum of money from said Defendants, refused to approve said bond, and purposely, wilfully, and corruptly avoided the approval thereof, until after the lapse of the time al-

lowed by law to said Defendants in which to supersede said judgment, and said judgment having been collected by said John Hardy as Marshal, the money collected by him on said judgment or a large part thereof, to-wit, over $31,000, was deposited by said Hardy in the First National Bank of Selma, Alabama, and was so deposited when said Bank suspended and was dissolved, and the said funds so deposited, or any part thereof, have not yet been recovered by said Hardy, nor by any officer of said Court, yet the said Richard Busteed, as Judge of said Court, proceeded to distribute said funds, and having decreed that one-half of the fund belonged to the United States he directed the other half to be divided between E. E. McClosky, who claimed to be informer in the case, and James Q. Smith, in different amounts, the sum paid to said James Q. Smith being more than half, to-wit, over eight thousand dollars, and said Busteed, as such Judge corruptly directed and authorized the said John Hardy to pay the sums so awarded to said parties out of funds of the United States in his hands as Marshal, not collected in said cause, and the same were so paid, the said McClosky then was and still is notoriously insolvent, and said Richard Busteed, before making said distribution and ordering said payments, well knew him to be insolvent.

Witnesses: Josiah Morris, Montgomery, Alabama; Samuel F. Rice, Montgomery Alabama; E. E. McClosky, Knoxville, Tennessee; Barna McKinne, Montgomery, Alabama.

Specification 4th.

In this, that said Richard Busteed, while presiding as Judge of the District Court of the United States for the Middle District of Alabama, at the November Term, 1865, at the Spring Term, 1866, at the Fall Term, 1866, and at the Spring Term, 1867, in cases in which the said James Q. Smith was of counsel for the plaintiff, habitually brow-beat and insulted the opposing counsel and witnesses, and decided questions contrary to what he knew to be the law, with a manifest purpose to suppress the truth, and prevent the administration of justice; this, in many cases, and especially in the cases of the United States and an unknown informer vs. Josiah Morris and J. F. Johnson; The United States and an unknown informer vs. A. F. Williamson; The United States and an unknown informer vs. 192 bales of Cotton; John W. Harper vs. Graves & Gayle; John C. Martin and John W. Graydon, assignees vs. Rose Morgan, administratrix; The United States and an unknown informer vs. 2,500 pounds of unpacked Cotton, James Fountain, claimant.

Witnesses: H. C. Semple, Montgomery, Alabama; D. S. Troy, Montgomery, Alabama; S. F. Rice, Montgomery, Alabama; Thomas H. Watts, Montgomery, Alabama; A. Martin, Montgomery, Alabama; William P. Chilton, New York.

(Signed) HENRY C. SEMPLE.

NOTE.—The statement in the Memorial as to the character of the officers appointed by the Judge, was not intended to apply to the Clerk, Mr. Blake, who had not resided in Alabama for some twelve months; nor to his Deputy, whose administration of his office was generally satisfactory. H. C. S.

CHARGES

Laid before the Judiciary Committee of the House of Representatives of the Congress of the United States,

BY ROBERT H. SMITH,

Of Mobile, Alabama,

AGAINST

RICHARD BUSTEED,

United States District Judge for Alabama.

Said ROBERT H. SMITH, CHARGES:

1st. That Richard Busteed, United States District Judge for the District of Alabama, in the fall of 1865, came to Mobile and entered upon the exercise of his office as Judge aforesaid, and that he, before or about that time, entered into a corrupt arrangement with one Lawrence Worrall, of the city of New York, who came to Alabama with him, to the effect that he, said Busteed, would appoint and cause to be appointed said Worrall, Clerk of the District Court and Clerk of the Circuit Court of the United States, at Mobile, and Commissioner of Bail and Affidavits, and also acting District Attorney for the Southern District of Alabama, and that said Worrall should divide the fees, emoluments, and profits to be derived by him from and through said several places with him, said Busteed, and that said Worrall was by said Busteed, and through the influence of said Busteed, appointed to said several places, and did for a long time hold and exercise the same, and that the said Worrall did exact and receive from and through said several offices divers large sums of money, as well in the way of extortion as legal charges; and that pursuant to said corrupt arrangement with said Busteed, the said Worrall did, while he held said offices and places, divide said money with said Busteed, for the use and benefit of said Busteed. That these corrupt practices and transactions continued while said Worrall held said offices, to wit: in reference to the office of District Attorney, until he, said Worrall, was superseded in said office by L. V. B. Martin, in or about December, 1866; and that the same corrupt practices and transactions continued in reference to the offices of Clerk of said Courts and of Commissioner of Bail and Affidavits while said Worrall held said offices, to wit: until he was appointed Register in Bankruptcy in the Bankrupt Court at Mobile in the year 1867, and that said last appointment was procured for said Worrall on a like corrupt understanding between him, said

Worrall and said Busteed, that said Worrall would divide with said Busteed the money he, said Worrall, might receive by, from or through said places, and that said Worrall has, from his appointment to said place, in the year 1867, to the present time, held said place, and has exacted and collected divers and large sums of money, both legal fees and money by extortion, and has by and with the knowledge, consent, encouragement and command of said Busteed, exacted, demanded and received of bankrupts in said Bankrupt Court large and unauthorized sums of money before they were allowed to come into said Court, and has exacted, demanded and received of creditors coming into said Court as such, large and unlawful sums of money; and among other extortions has demanded, exacted and received of each creditor five dollars for making proof by his own oath, in the form prescribed by the Bankrupt act of the United States and by the rules of the Supreme Court of the United States, and for which by said laws and rules he, said Worrall, was only entitled to charge and receive the sum of twenty-five cents, and that said exactions and charges were demanded and received under pretence that he, said Busteed, had the right to establish, and had established, five dollars as the proper charge for each affidavit aforesaid. That these extortions were all committed with the knowledge and approbation of said Busteed; that he, said Busteed was a party thereto, and that the large sums of money derived from said several sources and in said various ways were divided by and between said Busteed and said Worrall.

2d. That when said Busteed, Judge as aforesaid, came to Alabama as aforesaid, to enter upon his office as Judge as aforesaid, he brought with him said Lawrence Worrall and one Rufus F. Andrews, of the city of New York, an attorney at law, and one Jacob Wilson, a foreigner, and a menial servant of said Busteed; that said Busteed and said Worrall and said Andrews entered into a conspiracy, in the execution of which said Wilson was to be the tool of the parties as Deputy Marshal, and which conspiracy was in effect that said Worrall was to have and exercise the places aforesaid; that said Andrews was to assist said Worrall in the office of District Attorney, and was to hold himself out as a practitioner in said Busteed's Courts; that said Busteed should so conduct the business in his Courts that large and excessive and unlawful cost should accrue, and that it should be made manifest that the employment of said Andrews would secure success in any cause in which he was engaged. That these facts soon became known to the suitors in said Courts, and that thereby various large sums were paid by suitors in said Courts to said Andrews under pretence of securing his legal services but in fact to secure favor with said Busteed. That said Busteed, said Andrews, and said Worrall performed their respective parts, with the design and purpose of extorting and getting money from the suitors of said Courts, and did thus procure large sums of money, which according to agreement said Worrall and said Andrews divided with said Busteed, and that said sums,

beyond lawful fees received by said Worrall, were extortions under the cover and protection of said Busteed, and said sums paid to said Andrews were bribes to said Busteed under cover of retaining said Andrews' professional services. That said Jacob Wilson was used as a tool of the parties, was kept in personal attendance on said Busteed as a menial, performed such duties as said Busteed assigned to him, and acted as Deputy Marshal of the Courts, went armed with large pistols exposed on his person to enforce the collection of whatever sums said Worrall demanded under the name of cost, either with or without executions, demanded openly of parties round and arbitrary sums for executing lawful process that came to his hands as Deputy Marshal, and that John Hardy, late Marshal of said district, was a party to said corrupt combinations and appointed said Wilson his deputy to aid in carrying out the purposes of said combination, and himself personally participated in said corrupt designs and acts. That by said corrupt combinations said Busteed in fact, held the offices of Marshal and Clerk of the Circuit and Clerk of the District Courts, and of Commissioner of Bail and Affidavits and of Attorney at Law in his Court, subordinate to his purpose and gain, and that he used the same for his own emolument and advantage, using and managing said Worrall, Andrews, Wilson and Hardy as subordinate tools for obtaining money, and that he did thus overthrow justice, establish wrong and bring odium on the administration of law in said Court, and did enrich himself with money corruptly got by the means aforesaid.

3d. That Richard Busteed, United States Judge of the District Courts of the United States of America, for Alabama, did in the fall of 1865, and from that time to the first of May, 1868, corruptly so organize, direct, manage and conduct the business of the District and Circuit Courts of the United States at Mobile that justice was sold, delayed and denied to the suitors in said Courts.

He did so manage and arrange that Lawrence Worrall of the city of New York, was District Attorney, Clerk of the District and Circuit Courts of the United States at Mobile, and Commissioner of Bail and Affidavits, with the understanding and agreement that he, said Worrall, should divide the emoluments of said places with said Busteed—that Rufus Andrews, of the city of New York, should frequent the Courts and obtain of suitors who had important cases in the Court large fees which he should divide with said Busteed—that said Busteed arranged with John Hardy, then the marshal of said Court, that one Jacob Wilson, the body servant of said Busteed, should be appointed deputy marshal of said Court, and that the moneys received from said marshal's and deputy marshal's office in Mobile should be divided with said Busteed.

That these arrangements and appointments were perfected by said Busteed and said agreements were carried out and thus said Courts and the business in them were subjected to the corrupt control and management of said Busteed, and that he thereby, to the great detriment of private rights and public morals and to the

scandal of the United States, and to his private gain and advantage, did corruptly administer his office of Judge of the United States of America.

4th. That said Richard Busteed, Judge as aforesaid, did corruptly forestall and prevent inquiries by suitors into divers official extortions and malpractices of Lawrence Worrall, clerk of said Circuit and District Courts, and of John Hardy, marshal of the United States as aforesaid, and of Jacob Wilson, deputy marshal as aforesaid, by insulting counsel who undertook such inquiries, by browbeating the witnesses called to the facts and by refusing to allow the witnesses to testify to the facts tending to prove the matters in issue.

5th. That said Richard Busteed, Judge as aforesaid, did cause divers suits and prosecutions to be instituted in the District Court of the United States at Mobile in the name of the United States, called libels against the property of various citizens of Mobile and of other parts of Alabama, and against various persons, and did afterwards dismiss said proceedings or decide the same in favor of defendants upon the payment by them to said Rufus Andrews of large sums of money called fees, and which money was divided by said Andrews with said Busteed.

6th. That said Busteed, Judge as aforesaid, did corruptly allow and encourage suitors in his Court to frequent his chambers and did accept from them presents of liquors and wines, and did accept from them entertainments while said causes were being tried before said Busteed, he knowing they were suitors in his Court, and that their course of conduct was intended to procure the favor of the said Busteed in the decision of their causes, and that he, Busteed, was influenced thereby to render and so did render judgments and decrees for said parties without regard to right, and contrary thereto.

7th. That said Richard Busteed, Judge as aforesaid, did in various ways unlawfully increase and multiply costs in cases in his Court and did encourage and sustain the officers of his Court in such excesses and frauds, and that he, said Busteed, shared with said officers the money thus exacted.

8th. That the course of conduct of said Busteed, as Judge, was such as to induce a wide spread opinion among the suitors in his Courts and the people of Mobile and other parts of Alabama, that their cases could only be won by bribing said Busteed, and that divers suitors in said Court did directly or under the name of employing said Andrews as attorney, bribe said Busteed as Judge in causes pending in his Court.

9th. That the said Richard Busteed, Judge as aforesaid, did, previous to the 21st day of April, 1866, corruptly form the design of obtaining control of the official books and papers from James M. Tomeny, then the Treasury agent of the United States at Mobile, for the collection of Government cotton, with the view of preventing the action of the Treasury Department in respect to said mat-

ters with which it was charged and with the view of having suits instituted in his Courts on matters already passed on and on matters pending before said Treasury agency and with the view of obtaining through seizures in collusion with secret informers, for his and their private advantage, large sums of money from claimants of cotton, and that he, said Busteed, did in pursuance of said design issue a paper of which the following is in substance a copy:

THE UNITED STATES,	IN THE UNITED STATES DISTRICT
vs.	COURT FOR THE SOUTHERN DIS-
662 BALES OF COTTON.	TRICT OF ALABAMA.

To the Marshal of the United States for the Southern District of Alabama, and to his Deputies, and to either or any of them.

You are hereby required to seize forthwith, and to take into your custody, all records, books, and papers within your district pertaining or in any wise relating to cotton belonging or said to belong at any time to the so-called Confederate States Government; also all records, books and papers wherever the same may be found in said district, relating to the seizure, detention, release, purchase, sale, transfer, shipment, or other disposition of any cotton whatever in the possession or under the control of any of the persons or firms hereinafter named, their predecessors in office, or their successors or representatives, or the subordinates of either, such records, books and papers being, as I am advised by the United States District Attorney for this district, material and necessary upon the part of the United States in this and certain other actions now pending and undetermined in this Court, and that such records, books and papers are essential to protect and sustain the interests of the United States in said actions and in other prosecutions to be instituted for and upon the behalf of the United States.

You will seize and detain in your custody such of said books and papers as are in the possession or under the control of J. M. Tomeny, S. E. Ogden & Co., J. J. Dillon, A. A. Winston, C. J. & R. G. McMahon, C. M. Roberts, Waring & Windham, Watson & Co., Pepper, Berry & Co., and if any of said records, books and papers, should be found in the possession of any other person or persons, you will seize and safely keep the same in your custody until the further order of the Court. And for this, this will be your sufficient warrant.

Witness my hand at the city of Mobile, this 21st day of April, 1866.

(Signed,) RICHARD BUSTEED,
U. S. District Judge for Alabama.

And did place the same for execution in the hands of Jacob Wilson, Deputy Marshal and menial servant of said Busteed, as aforesaid, who did, under said order, forcibly take from said Tomeny,

Treasury Agent, as aforesaid, the books and papers appertaining to said agency, and said Busteed and Lawrence Worrall did keep the same secretly for the use aforesaid of said Busteed. That the Secretary of the Treasury of the United States did cause a motion to be made in said Court for the restoration of said books and papers to the Collector of the Port of Mobile, but that said Busteed pretending to grant said order did in fact so contrive with Lawrence Worrall, aforesaid, that only a few of said papers, and such as were of little or no value, were restored to the United States, and that the removal of said Worrall from the place of District Attorney, and of John Hardy, as Marshal, prevented the execution in full of the designs of said Busteed, of harassing by suits various citizens of Alabama, for the benefit and advantage of said Busteed, said secret informers, and of said Worrall and said Andrews.

10th. That before the issuance of said order before set out, James M. Tomeny, the Treasury Agent at Mobile, had, as such agent, and for and in the name of the United States, taken from one Price Williams, of Mobile, 227 bales of cotton as the property of the United States, and had caused the same to be shipped to the Agent of the United States at New York, on board of a vessel, the name of which is not remembered, then lying at the Port of Mobile, and said Williams libeled said vessel in the District Court of the United States, at Mobile, for a marine *tort* for taking on board said cotton, and said Busteed, sitting as Judge in said Court, heard said libel and decreed for said Williams, and the cotton was thereupon surrendered to him, said Williams. This was in the winter or early in the spring of 1866. Subsequently, in March, 1866, said Williams sent this cotton, by a lighter steamer called the "Natchez," to a ship lying at the shipping in the lower bay of Mobile, for shipment to Liverpool, England, or to some other port, and the lighter sunk on her way to the vessel with her cargo of 1470 bales of cotton belonging to various owners and shippers. Nine hundred and thirty-eight bales of this cotton were saved by various salvors, who filed their libels against the cotton for salvage in said District Court, and it was agreed by and between the Proctors for the claimants and the Proctors for the salvors that to save cost the cotton which was saved and which was wet and damaged might be taken by the claimants, on certain good and sufficient and usual Admiralty stipulations, which were agreed on, but said Busteed refused to allow the property to be taken on stipulation, assigning as a reason that it was against the policy of the Court to allow property seized on admiralty process to be taken out of the hands of the Court on stipulations, and that the property ought to be sold. Both the salvors and the claimants urged in vain that the statutes of the United States and the admiralty practice encouraged such stipulations, and that it was a right to give them. This was in March, 1866, when most of the salvors had exhibited their libels. In a few days, some other small amounts of the cargo which were saved were libelled by the salvors of the same.

The last libel seizure was on the 5th of April, 1866. On or about said 5th of April, 1866, said Busteed pretended to have information that the 227 bales of cotton, which he had before awarded to be the property of Price Williams, was the property of the United States, and under this pretence Rufus Andrews, before mentioned, in collusion with said Busteed, filed a claim for it in behalf of the United States, whereupon said Busteed, who had as before said, refused to allow any stipulation to be given for the cotton, entered the following order for the sale of 454 bales of the cotton saved from the said steamer Natchez, on the general claim of said Andrews, that the United States had a claim to 227 bales of the cotton saved.

DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF ALABAMA. } IN ADMIRALTY.

Charles C. Newberry *vs.* 66 Bales of Cotton; William C. Piggott *vs.* 27 Bales of Cotton, and others, against sundry bales of Cotton, part of the cargo of the lighter steamer Natchez.

In these cases, *which have been consolidated*, a motion is made by the claimants for the delivery to them on stipulation, of the property described in their respective claims, and Mr. R. F. Andrews appears in behalf of the United States to oppose said motion. Proof being made to the Court, that the property libeled and now in possession of the United States Marshal, is in a perishable condition, and that certain of said property, to wit, 227 bales of cotton, before its shipment on the Natchez, bore the proprietary marks of the United States, and was in good order and sound, at the time of said shipment, and that these marks were erased and others substituted; and it being suggested to the Court, that identification of said cotton, by the submergement thereof in the waters of the Bay, has been rendered difficult, it is ordered that 454 bales of said cotton of the average condition of the whole, *without regard to marks*, be retained by the Marshal, and be sold by him under the rules of the Court, and the direction of Mr. Andrews, and the proceeds thereof be paid into the registry of the Court, to abide the final decree in the cause.

It is ordered that the remainder of said cotton be delivered to said claimants according to their respective claims, upon their entering into stipulation therefor, with satisfactory security, to be approved by the Clerk of the Court, at the rate of $150 per bale, conditioned as directed by the rules of the Court.

(Signed,) RICHARD BUSTEED,
U. S. District Judge of Alabama.

Under this order the 454 bales of cotton were sold by the Marshal in *one lot*, and greatly below the market price, and were knocked off so quickly that competition was prevented, and a bill of cost and charges was rendered in said matters of $10,414 63-100, which was extortionate and false.

The Proctors for the claimants moved to set aside the sale, and another motion was afterwards made to re-tax the cost, and said Proctor offered proof of the facts of sale above stated. The witnesses, J. S. Secor of Mobile, and Charles Ketchum of Mobile, and others, all highly respectable men, were offered, and they and the Proctor, Peter Hamilton, Esq., of Mobile, were insulted by said Busteed, in the grossest manner, and the witnesses were not allowed to state the facts, and each motion was overruled. Subsequently Price Williams paid to said Busteed, or to said Andrews, for himself and said Busteed, a large sum of money, and said Busteed sustained a second time his rights to the cotton.

It is charged that this claim to 227 bales, and the seizure under it of 454 bales, and the sale of it were all devices of said Busteed to create a pretext for not allowing it to be taken under stipulations, and to enable him to sell it and to get the large cost and expenses charged, and to get the money arising from the sale, and to force Williams to pay him a bribe to get the remnant of money, and that said Busteed was with said Andrews employing the name of the United States to enable him to execute said purposes.

A plain, naked and exact printed outline of the proceedings in the Natchez case is herewith submitted, marked A, and it is believed that said Busteed was interested in the purchase of said cotton, at said Marshal's sale.

11th. That in various cases of libels for salvage in the District Court of the United States, at Mobile, said Busteed refused to the claimants the right to enter into stipulations such as are allowed by the statutes of the United States, and by the general principles of Admiralty Law, and that such refusal was for the purpose of increasing the cost and expenses of the proceedings, and that large costs and expenses were thereby unnecessarily and corruptly created, and that said Busteed received or shared the money so raised.

12th. That in the winter or spring of 1868, a large vessel, whose name is not remembered, laden with cotton, was struck by lightning and sunk in the bay of Mobile. That various sailors and others from other vessels near, saved a large amount of the cotton on board the sunken ship, and filed their libels in said District Court at Mobile for salvage in the spring of 1868. That the agents of the owners and underwriters upon said cotton, moved to be allowed to take the same on entering into the usual admiralty stipulations, but that said Busteed refused to allow the same, caused the cotton to be sold at auction, ordered and caused the proceeds of sale, amounting to about three hundred and fifty thousand dollars, paid into his Court, adjourned his Court without trying said causes, though the parties were ready, and from day to day answering for trial, went to New York and has not returned—said matters are left undecided—the money is in the hands or under the control of said Busteed, and the salvors, many of whom are sailors, not having homes in Mobile, will be compelled to lose their money, or were driven to sell their claims

for a pittance. It is charged that these proceedings were had to increase the cost for the benefit of said Busteed, and to give him control of said money, and it is belived that said Busteed was through his agents speculating in the claims of the salvors, sailors and others as aforesaid.

13th. That at the winter term 1867-8, said Busteed out of malice to one Gustavus Horton, who was and is Mayor of the City of Mobile, did maliciously cause and procure said Horton to be indicted in his Busteed's Court, for violation of the act of Congress known as the civil rights bill, charging said Horton in effect with discriminating against one freedman, Archie Johnson, on account of his said Archie Johnson's color, and that so acting he Horton had as Mayor ordered and caused said Archie Johnson to be sent out of the State of Alabama; and said Busteed did cause said Horton to be tried and convicted of said offence—did refuse on said trial to allow said Horton to introduce evidence of his innocence—did insult and browbeat C. F. Moulton, Esq., said Horton's attorney, so that he could not defend his client—that said Busteed did among other things charge the Jury in effect that said Horton's guilt was clear and that he should be convicted—that he said Busteed delivered to the Jury in said cause a long and elaborate charge, in which he falsely assumed the facts to be, as by him set out in said charge—and that by refusing to said Horton a fair trial, and by inflaming the passions of the Jury, he did cause said Horton to be wrongfully convicted, and said Busteed did then deliver a sentence defaming and insulting said Horton, and fining said Horton in the sum of two hundred and fifty dollars, which he compelled said Horton to pay. That these proceedings were had to enable said Busteed to revenge himself on said Horton for opposing and defeating with the Republican party of Alabama the political aspirations of said Busteed.

14th. That one Albert Griffin, of the City of Mobile, was an applicant for the office of Register of the Bankrupt Court of Mobile, which said Busteed desired should be conferred upon Lawrence Worrall aforesaid, for the purposes and reasons aforesaid--that to prevent the appointment of said Albert Griffin he refused to allow said Albert Griffin to become an attorney of said Court, and corruptly and by false representations had said Worrall appointed, and shares with said Worrall the moneys received from and through said office.

15th. That said Busteed has appointed one Bailey to be assignee in bankruptcy in Mobile, and refuses on various pretexts to allow the creditors of bankrupts to elect their assignees. That said Bailey who is thus given charge of the large effects of bankrupts in the Bankrupt Court at Mobile, was at the time of his appointment a pedlar of opened oysters in Mobile, was and is wholly irresponsible and unfit for said trust, and is the mere creature of said Busteed, and administers his office for the pecuniary benefit of said Busteed.

16th. That said Busteed, without any good cause, refuses to allow one Healey, the Marshal of the District of Alabama, to take

charge of bankrupt effects as provided by law until the appointment of the assignee, but commits the same to the care of said Jacob Wilson, whom said Healy refuses to allow to be his Deputy, and said Busteed causes, in conjunction with said Worrall, delays and impediments to take place in the election of an assignee: then refuses the appointments made by the creditors, and finally places said Bailey in possession of the assets, which, between said Wilson and said Bailey, are largely converted to the use of said Busteed.

17th. That in the Spring of 1866, said Busteed caused two hundred and thirty-nine bales of cotton to be seized in the District Court of the United States, at Mobile, under process and on allegations that the same were the property of the United States. That said cotton was claimed by Theodore Nunn & Thompson, for the Planter's Factory of Autauga county, Alabama. That while the cotton was under seizure by John Hardy, then the Marshal for Alabama, he, the said John Hardy, feloniously appropriated the same to his own use and to the use of said Busteed, and substituted two hundred and thirty-nine other packages, called bales of cotton, in their place, of inferior quality, and of less weight than those seized, and that said Busteed, to prevent the discovery of said act, did, against the orders of the Attorney General of the United States given in said matter, cause said substituted cotton to be sold by said John Hardy, Marshal, as aforesaid, and has never accounted for the proceeds of the cotton sold, nor required said Hardy to do so, and has without authority of law transferred the case from the District Court of Mobile to the District Court of Montgomery, and then back to the Court at Mobile, and has finally dropped the case from the business of the Court. That said cotton was first seized by the Treasury Agent of the United States at Mobile, and was referred for adjudication to the Secretary of the Treasury of the United States, at Washington, and was by said Secretary of the Treasury ordered to be returned to the claimants, and was on such order attempted to be so returned by James M. Tomeny, the Treasury Agent, but that said Busteed, who had caused the same to be taken from said Treasury Agent, refused to listen to the decision of the Secretary of the Treasury, and in open Court denounced the Secretary of the Treasury for having made the decision, and said, in open Court, among other abuse of said Secretary, that he "had better attend to his greenbacks." When the Attorney General ordered, in effect, that the cotton should not be sold, said Busteed disregarded the order, sneeringly saying in open Court, in effect, (speaking of Mr. Speed, then Attorney General,) that "he had heard of Attorney Generals who knew some law."

18th. That said Richard Busteed is ignorant of the duties of his office, ignorant of ordinary principles of law, arrogant, presumptuous, overbearing and insulting in the discharge of his duties.

19th. That in a certain cause lately pending on the equity side of the Circuit Court of the United States, at Mobile, wherein William E. Leverich and others were Complainants, and the Mayor, Alder-

men and Common Council of the city of Mobile, were Defendants, filed in said Court on or about the 15th of May, 1867, one Moses Waring of the City of Mobile, who mainly managed, out of Court, the cause for Complainants, and with whom he was a party largely in interest, did through said Rufus Andrews and otherwise, bribe said Busteed to decide said cause for Complainants, and that being so bribed he, said Busteed, did decide said cause for Complainants, without regard to the right, law or justice of said cause.

20th. That for a long time, to-wit, in the Spring of 1866, and while said Busteed was holding Courts in Mobile, no minutes or records of the proceedings of the Courts, which were daily engaged in the transaction of large and important business, were kept, and that up to December, 1867, said Busteed did not examine or pay any attention to the records of his Courts, and that in the spring of 1866, John A. Cuthbert, who acted as deputy clerk of said District and Circuit Court, of his own accord made up the minutes of the past six or eight weeks, from imperfect docket entries, from private notes of the Judge, and from loose scraps of pencil memoranda made by said Cuthbert.

REVIEW

OF THE

EVIDENCE REPORTED BY THE JUDICIARY COMMITTEE OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES ON CHARGES AGAINST RICHARD BUSTEED, UNITED STATES DISTRICT JUDGE FOR ALABAMA.

By ROBERT H. SMITH.

In discussing the evidence upon the charges preferred against Judge Busteed, I propose,

1st. Briefly to consider his general bearing and conduct on the bench.

2d. To discuss specific cases of corruption in connection with his officers and others.

3d. Lastly, to show that he is impeachable under the statute law for non-residence.

The condition of the administration of justice in Judge Busteed's Court is pretty fully exhibited by the evidence taken. A general review of such evidence will probably present a sufficient consideration of several of the charges; will avoid much repetition, and is perhaps due to Judge Busteed; for if it shall show a course of general propriety, it will go a great way towards relieving the accused. If, on the contrary, it shall show that he has failed to comprehend the dignity and propriety of his place; has violated common decency in the discharge of his duties, and has subverted justice in his court, such proof must be received as strong testimony not only of his unfitness for his high office, but of his corruption and guilt. I, therefore, propose to begin this argument by presenting

A BRIEF REVIEW OF THE ACCUSED AND HIS COURT.

Judge Busteed has proven by almost every Alabama lawyer who has been examined, that he was treated by each, not only with marked courtesy, but that he was courted and entertained with almost obsequious politeness.

The members of the Bar of Alabama who testified before the committee, are John A. Cuthbert, Peter Hamilton, Thomas H. Herndon, Amos R. Manning, Judge Dargan, Thomas A. Hamilton, William G. Jones, J. Little Smith, Alexander McKinstry, C. F. Moulton and Percy Walker, of the Mobile Bar; and William P. Chilton, Abraham Martin, John A. Elmore, Samuel F. Rice, Frank Bugbee, H. C. Semple and others of the Montgomery Bar.

Judge Cuthbert (80 years of age, and probably the senior member of the Alabama Bar, and to whose intelligence the gentlemen of the Committee before whom he was examined will bear witness,) on page 73 of the printed record, in answer to the question,

Who are the leading gentlemen of the Mobile Bar? State their character as to ability? Answers, Peter Hamilton, who is here in the city, Judge Jones, Dargan and Taylor; J. Little Smith, Judge McKinstry, Mr. Anderson, Manning and Walker, are among those who are considered eminent in their profession, and who have long been engaged in the practice there. Judge Dargan is an ex-chief justice of the Supreme Court of Alabama.

Judge Busteed has cross-examined almost every lawyer who was a witness, to prove how marked were the civilities of the bar towards him. (See the testimony of these witnesses.)

The point of these courtesies is thus well brought out by the Judge's cross-examination of Mr. Manning, on pages 246 and 247 of the printed record:

Q. Did you dine with Judge Busteed at Mr. Anderson's at a dinner given by Mr. Anderson to Judge Busteed? A. I did.

Q. On February 8, 1867? A. I do not know the date.

Q. About that time? A. I presume so. It was in the winter of 1866-67.

Q. On the 13th February, 1867, did you give Judge Busteed a dinner at your own house? A. I gave him a dinner in the winter of 1866-67. On what day I do not know.

Q. That was a dinner table surrounded entirely by lawyers? A. Yes, sir.

Q. Was J. Little Smith one of them? A. I think he was.

Q. Was John J. Walker? A. He was.

Q. He was a Judge of the Supreme Court? A. No, sir. John J. Walker was never a judge. He had been an attorney in early life, but was then a merchant.

Q. Was John T. Taylor one of them? A. Yes, sir.

Q. He is a lawyer? A. Yes, sir.

Q. Was D. C. Anderson one of them? A. Yes, sir.

Q. Thomas H. Herndon was one of them? A. Yes, sir.

Q. George N. Stewart? A. Yes, sir.

Q. W. J. Jones, predecessor in the place Judge Busteed holds? (Misprint for W. *G.* Jones.) A. Yes, sir.

Q. Your partner? A. Yes, sir.

Q. Does your partner (Percy Walker) that you know of, entertain the same feelings towards the Judge that you do? A. I cannot undertake to say what his feelings are. I think he entertains pretty nearly the same feeling as I do towards you. I desire to say, in reference to these entertainments given to Judge Busteed, that his course as judge had created a great deal of dissatisfaction among the members of the bar, and they considered that it was necessary to do something to try and make

him more kindly and just in his office. It was suggested that attentions and civilities of the members of the bar to him might have the effect of making him a better and juster judge; and that it was our duty to our clients and to the public, for whom we were representatives in his court, to be as kindly in our relations to him as possible. It was upon suggestions of that sort that it was intended to give him a series of entertainments. Some were given, but they were not continued, and my own was the last given by the members of the bar—as members of the bar—to Judge Busteed.

At page 96, Peter Hamilton, on cross-examination by Judge Busteed, proves that in the spring of 1866 he met Judge Busteed at dinner with citizens of Mobile, and with members of the profession; that he again dined with him on Mr. Gage's invitation; and that Judge B. and Mr. Andrews dined with Mr. Hamilton, at Mr. H.'s house and with his family; and that Mr. H. again, in a few days after, dined with the Judge, and Mr. Worrell and Mr. Andrews (the two particular friends of the Judge), at General Withers'. This is Jones M. Withers, a witness.

See the evidence of nearly every lawyer examined in the case, and note how carefully Judge Busteed has been to show that they at least were very civil to him, whatever his conduct was to them.

We observe that the last answer of Mr. Manning, quoted above, is pregnant with the following ideas:

1. That the judicial conduct of Judge Busteed had created great dissatisfaction with the bar.

2. That this dissatisfaction was not based upon some mere peculiarity of manner, but that with bad manners he combined official injustice.

3. That he was so bad and so unjust a judge, they were impelled by their relation to their clients and the public, to stoop to the expedient of attempting his reformation by special civilities under their own roofs.

4. That the experiment proved fruitless and was abandoned.

Comparing the names of the guests mentioned by Mr. Manning with the list of prominent lawyers named by Judge Cuthbert, we see how comprehensive and earnest was the effort of the bar to rescue the bad judge. All named by Judge Cuthbert were guests at Mr. Manning's, except Peter Hamilton, Judge Dargan and Judge McKinstry. Peter Hamilton had himself commenced these civilities. Judge Dargan's name will hardly be looked for among the guests dining with Judge Busteed after reading Peter Hamilton's account of Judge Busteed's bearing to Judge Dargan at page 95; Thomas H. Herndon's at page 123, and Judge Dargan's evidence on the same subject, taken in Mobile. Judge McKinstry's name would not be looked for at this dinner after reading at pages 343 and 344 from his own mouth that he is positively unfriendly with several of these leading lawyers. Has had a fight with Judge Dargan, a man verging on old age, and an ex-chief justice of the Supreme Court of Alabama; is merely on speaking terms with another, and has no social relations with the families of his brother lawyers, though he has re-

sided for nearly thirty-two years in Mobile, and was on the City Bench for eleven years; and as to whose social standing Judge Chilton (for many years Chief Justice of Alabama, residing at the capital of the State,) significantly says, at page 36, in reply to Judge Busteed's question: Do you know Judge Alexander McKinstry, of Mobile? What is his professional *and social reputation in the State of Alabama?* I know him. I am not as well acquainted with Judge McKinstry as I am with a number of lawyers. *I do not know* that I can speak *from personal knowledge* of his social standing *in Mobile*—thus avoiding a reply as to "his social *reputation* in Alabama," or elsewhere.

Remembering the civilities of the bar to Judge Busteed, let us see what was his bearing and conduct on the bench, and then let us look at the wrongs done to parties, and see whether his conduct was merely that of an ill-bred man, or if there was a sinister and personal purpose to be attained by establishing a terrorism in his court, which should silence all opposition and enable him, through his officers, to plunder with impunity. The significant facts appear beyond doubt that the suitors were robbed. The facts indeed are not denied. It cannot be denied, for instance, that the Numm & Thompson cotton and the Withers cotton were stolen. It cannot be denied that the costs in the Natchez cases were immensely multiplied and were unheard of—that the Freedman's Bureau property spoken of by General Swayne was appropriated—that a large portion of the money in the Morris case went to J. Q. Smith—that Worrell took excessive fees, and that Jake Wilson took $5,000 from one suitor, and got large sums under the guise of auctioneer. The answer of Judge Busteed is, What have I to do with all these things? My officers did these wrongs, but what have I to do with them? This is just the point. The wrongs are established, and the participation of the Judge in them will appear as plainly as the wrongs themselves if we attend to the course of his conduct and action. It is not to be supposed, however, that the evidence against him would be so direct as that establishing the acts of the agents employed. That 239 bales of cotton were carried to a pickery and half of them taken out by order of the Marshal or his deputy, is a fact which has been established by direct proof. The participation of Judge Busteed in it can be shown, necessarily, only by circumstantial evidence. The proposition of the prosecution is that these wrongs of the officers were guarded and protected by such modes of proceedings and by such conduct of the Judge as overawed and suppressed inquiry, and that if some attorney dared attempt to right his client, he was taught that the Judge of the court would be a speedy avenger, and all others would take warning.

On this branch of the inquiry the first proposition is,

WHAT WAS THE GENERAL CONDUCT OF THE JUDGE IN COURT, AND WHAT WAS ITS NATURAL EFFECT.

The following extract from the testimony (189) of William D. Dunn, retired lawyer, but who, as President of a railroad, was fre-

quently attending court as a suitor, shows that Judge Busteed not only offered a wanton insult to the whole bar, but on the bench, in open court, boasted of his own infamy:

Q. Did you hear Judge Busteed on the bench, when the bar were attempting to get him to make some rules in relation to the disposition of business, make any statement in reference to his course of conduct when he was at the New York bar? if so, what did he say? A. I was present in court on one occasion when the lawyers were endeavoring to settle the practice as to continuances, and as to laying cases over for trial. Among other things it was remarked that the indisposition of counsel would be good cause for not proceeding with trial, and for continuing or postponing the case from day to day. That was the idea. They were trying to settle some rules of court. The Judge was on the bench. In response to the suggestion of the indisposition of counsel, the Judge replied very definitely that that would not do; that it was known in New York when he was at the bar, that no man could get sick faster or sicker than he could. That was in response to the proposition as to the indisposition of counsel being received as an excuse for not proceeding with trial.

Reference is made to the narrative of Thomas H. Herndor, pages 122, 123 and 124, of the Judge's unprovoked conduct in Court to Mr. Hall, Judge Dargan and to Mr. Percy Walker.

The business of the court was dealt with contrary to the expressed announcement of the Judge, by reason of which Mr. Hall, an attorney, was forced to a non-suit in one important cause; and for taking the non-suit he was fined ten dollars.

Judge Dargan, for asking that a motion made by him and overruled should be put on the docket, and his exceptions to the ruling of the court entered, was disposed of with the remark, "Hope springs eternal in the human breast, Judge Dargan." Judge Busteed had established a rule that no case should be heard and no trial take place until copies of the pleadings had been furnished to the court. The Judge, at the instance of J. Q. Smith, (as to whom and his relations with the Judge, see the testimony of Gen. Swayne, and of the witnesses generally who reside in Montgomery,) having forced Mr. Percy Walker to trial on the same day when the call was not peremptory, Mr. Walker inquired if copies had been furnished as required by the above rule. The Judge replied, "I beg your pardon Mr. Walker, I had forgotten you were an associate justice of this court;" adding, "if you ask me historically whether copies have been furnished me, I will tell you historically that none have been furnished, and that the time has not yet arrived in this case for copies." Note, that by the rule the time had arrived for copies.

Thomas H. Herndon was always treated with politeness by the Judge, but was never allowed to argue a case—but, as the witness expresses it—"he always choked me off politely." And the Judge always decided against him. Mr. Herndon is the law partner and brother-in-law of Robert H. Smith.

Read the following testimony by A. R. Manning of the foregoing matters and others, pages 244, 245.

Q. You have said that Judge Busteed would sometimes adjourn his

court capriciously; will you state any days or months upon which these adjournments were so made. A. In the spring of 1868, when the court was held, and Mr. Chilton was attending to the case of the United States against certain cotton levied upon, which was claimed by Lehman, Durr & Co., the Judge on one day, I remember, opened, I think, the circuit court, and, having called a number of cases, adjourned it until the next day, as I understood.

Q. This was after the Judge had been shot. A. Yes, sir.

Q. Why do you say that was a capricious adjournment? A. Wait, sir, until I get through. He then opened the District Court, and called the admiralty docket, perhaps, or some other docket of the district court, and after having called a number of cases, directed that court to be adjourned, and the circuit court to be reopened. The circuit court was reopened, some causes called, and after awhile that court was adjourned. Thereupon Judge Chilton arose and asked the court to take up the case of the United States vs. Lehman, Durr & Co., or in which they were claimants, and endeavored to get a trial, as he had been endeavoring for many days before, and the court stated that the district court, in which, I think, it was pending, (I may be mistaken as to the court), was adjourned, to which Judge Chilton replied that he (Judge B.) had reopened the circuit court after it had been adjourned, and he thought, that for the trial of this case, he might reopen the district court. The judge declined to do so, and adjourned the court.

Q. And is that the capricious adjournment of which you have spoken. A. The adjournment of the circuit court for the day, the opening of the district court, then the reopening of the circuit court and adjournment I certainly considered capricious.

By Mr. ELDRIDGE:

Q. Were these courts adjourned to any specific day, when the adjournments were made? A. I understood them to be adjourned to the next day.

Q. Each time? A. Yes, sir.

Q. And then opened again on the same day? A. Yes, sir.

By Judge BUSTEED:

Q. Do you mean to say that Judge Busteed ever adjourned either the district or the circuit court to a day certain, and before the arrival of the period to which the courts were adjourned, opened the court again. A. That was my understanding of it on that day, and I was very much surprised at it.

Q. How were the adjournments of the court usually made? A. By an order to the crier to adjourn the court.

Q. Publicly given? A. Yes, sir; the crier standing at the further end of the room at the time.

Q. Did you ever know of a secret adjournment of Judge Busteed's courts? A. No, sir.

By Mr. ELDRIDGE:

Q. In these cases to which you refer, did the crier cry the court adjourned? A. I think he did.

Q. And then after that announcement was made by the crier that same court was opened again on the same day? A. I think so.

Without swelling this review by references and quotations respecting the general manner of the Judge, and his mode of conducting the courts, it will suffice to refer to the testimony of almost every

lawyer whose evidence was taken, making manifest that his conduct was unprovokedly and willfully rude, overbearing and insulting, to witnesses and counsel; that the irregular mode of conducting business in the court rendered it impossible for parties to obtain justice, and left them at the mercy of the Judge's caprices; and that a scheme of legerdemain was resorted to, by which the proceedings became a mockery of justice. A few instances of such legerdemain will sufficiently illustrate the rule.

The Supreme Court of the United States had in Toland *vs.* Sprague, 12 Peters, 300; in Irvin *vs.* Lowry, 14 Peters, 493, and in several other cases collected in Brightley's Federal Digest, p. 60, held that a defendant could not be brought into court by a levy on his goods by foreign attachment, and that the only mode of bringing a party into court was by personal service of process. But the same authorities held *that the want of service is cured if the defendant appears in the case.* Rufus Andrews, a special friend of the Judge, as is shown by the Judge's admission in the record, and by other proofs; who came and went with the Judge, and who lived with him, and who had no office, no books, and no reputation as a lawyer in Mobile, and was entirely unknown there until he came with the Judge, and who never personally conducted before the court any complex trials—but who was employed in many large cases, and who always gained them—and who is charged with being a confederate of the Judge; this Mr. Andrews sued out an attachment in favor of Claflin & Co., of New York, *vs.* Rosenstock & Co., and property was levied on as defendants'; but no process was served on them. Mr. Manning wished to bring to the notice of the court the facts that the defendants had not been brought into court. Judge Dargan, who represented creditors of the defendants, wished to make a motion for their protection.

The Judge refused to hear either, *unless he would appear for the defendants, and thus cure the want of service, and make Andrews' suit good, and deprive his client of the very right he was employed to assert.* The property attached amounted to between $75,000 and $80,000.

Blackstone, vol. 4, p. 141, thus comments on such conduct. "There is yet another offence against public justice, which is a crime of deep malignity; and so much deeper, as there are many opportunities of putting it in practice, and the power and wealth of the offenders may often deter the injured from a legal prosecution. This is the *oppression* and tyrannical *partiality* of judges, justices, and other magistrates, in the administration and under color of their office. However, when prosecuted, either by impeachment in Parliament, or by information in the Court of King's Bench, (according to the rank of the offenders,) it is sure to be severely punished with forfeiture of their offices, (either consequential or immediate,) fines, imprisonment, or other discretionary censure, regulated by the nature and aggravations of the offence committed."

Judge Busteed, in fixing unheard of allowances to be made to the officers of his court in Montgomery, informed the bar that he would

regard any opposition to his cost bill as unkind. See evidence of A. Martin and E. W. Pettus, taken in Montgomery. As might have been expected, no motion was made to retax cost in Montgomery.

But one motion is remembered to have been made to retax cost in Mobile. It grew out of causes known as the Natchez salvage cases. The costs specially known and originally passed on and allowed by the Judge exceeded $10,414 63. See transcripts of the records on file, numbered from 1 to 8, inclusive. They are a part of the evidence in this investigation, and are referred to in the printed evidence, but were not printed. (See index to printed proofs, number 38½.) Transcript No. 6 contains the several cost bills in items, and the signed decrees of the Judge allowing them, except as to one case, and as to that see transcript No. 3, p. 18. For index and explanation of this record see appendix to this review.

The suits were salvage suits of the simplest kind. The property in the actual charge of the court was 454 bales of cotton, that brought about $45,000. Other cotton saved, and which was turned over to the claimants, on stipulations, amounted to about $43,000.

Peter Hamilton, Esq., the Proctor for the claimants, moved to set aside the sale made of the property, and showed clearly that it should be set aside. He was refused with insult, and driven from the court. He moved to retax the cost. A small reduction was made of the costs; but after this reduction, the amount of $10,414 63 was allowed. His testimony fully sets forth the conduct of the Judge on these occasions. It is hardly necessary to add, that no other motion was made to retax cost in Judge Busteed's court in Mobile; and that such conduct itself answers the question, what had Judge Busteed to do with the extortions of his officers?

The costs of $10,414 63 were allowed *in fact* (except attorney's tax fees, and some small part of the allowances for depositions,) to John Hardy, Jacob Wilson, and Lawrence Worrall. Who these parties were, and their relations to the Judge, will appear in the sequel. A particular history of the cases will show Judge Busteed's agency in purposely creating costs, by dealing with the causes to that end, in clear violation of the law and the practice of Admiralty Courts.

The enormity of the amounts charged for the services rendered will appear by comparing the items, found in the records on file, with the act of Congress regulating fees, approved February 26, 1853, (10 U. S. Stats. at large, p. 161.)

The sums which made up the $10,414 63, are thus generalized:

FROM TRANSCRIPT 4, PAGE 40, AND TRANSCRIPT 6.

1.—Proctor's fees, thirty-two cases, $20 each..			$ 640 00
2.—Depositions of witnesses			390 00
3.—United States Commissioner Worrall—thirty-two reports, $10 each			320 00
4.—District Clerk Worrall—commissions 1 per cent. on gross proceeds of sales $93,039.50, of which were paid in court $50,756 06			930 39
5.—United States District Clerk Worrall—clerk's fees			1,265 10
6.—United States Marshal Hardy—expenses claimed	$2,213 25		
	90 00		
	227 00—		2,530 25
7.—United States Marshal Hardy—fees and commissions	2,441 48		
Auctioneers' fees to Jacob Wilson	1,430 10—		3,871 58
			$9,947 32
8.—United States Marshal—charges in case of Gray..	$388 18		
United States Clerk—charges in case of Gray.....	79 13—		467 31
Making total of costs and charges, the sum of			$10,414 63

The above is a mere table of the results of the thirty-two bills of costs in Transcripts No. 4, page 40 and No. 6, and in Gray's case.

Without swelling this paper by recitals of all the various instances of capricious, overbearing and unjust conduct in the Judge, reference is made to the depositions of Manning, P. Hamilton, Cuthbert, Dunn, Dargan, Herndon, Martin, Pettus, Rice, Swayne, T. Hamilton, Horton. The case of Horton, prosecuted before Judge Busteed, is an instance of the conviction of an innocent man by the oppression and persecution of a Judge bent on revenge, of which a parallel can hardly be found.

Let us now enumerate briefly other cases of deprivation of rights inflicted on suitors, and see who were the parties ostensibly benefited thereby, and what relations they bore to the Judge, and what contrivances he put in motion to enable them to reap their plunder, and what protection he threw around them. It will appear in almost every case, except in that of the conviction of Horton, which will be shown to have been produced to gratify personal spite and malice, that the parties ostensibly benefited were John Hardy, late Marshal, Jake Wilson, the Judge's body servant, J. Q. Smith, late District Attorney for the Middle District of Alabama, Lawrence Worrall, the former law partner of the Judge, and first Clerk, District Attorney, Commissioner of Bail and Affidavits, and late Register in Bankruptcy; and Rufus Andrews, who came and went with the Judge; who appeared in divers large suits, especially when there was plunder, and who won them all: who lived with the Judge and had his so-called office with Worrall, and across a passage from the Judge's chambers, in the third story of the Custom House.

But first and preliminary to this inquiry, let us look into the case

OF SO-CALLED PRESENTS TO THE JUDGE.

The investigation of the several matters will be confined to acts which are beyond dispute.

George E. Spencer, now United States Senator from Alabama, and Burke and Day and Worrall, and J. O. D. Smith, were Registers in Bankruptcy in Alabama, and were liable to be suspended from office by the Judge, and their fees were subject to his rulings.

On the 12th of February, 1868, Abner R. Storer, the Deputy Clerk at Montgomery, wrote J. O. D. Smith the following letter, by express direction of Judge Busteed: (p. 220.)

MONTGOMERY, February 12, 1868.

Dear Sir:

In future, petitions in Bankruptcy will not be filed until fifty dollars are deposited with the Clerk, as required by law, and the Clerk's fees paid in advance, or amply secured. Judge Busteed arrived here this morning, in quite a feeble condition, unable to attend to any business.

Yours respectfully, E. C. V. BLAKE,
Clerk of the United States District Court.

J. O. D. Smith, Opelika.

A similar letter was written to Spencer. (See p. 220.)

The following extract from Storer's evidence, p. 220, is explicit:

Q. Did you write that letter, and if so, by whose direction? A. I wrote that letter by the direction of the Judge.

Q. Communicated to you personally? A. Communicated to me personally.

By Judge BUSTEED:

Q. Did you write that letter by my direction? A. I was told to write to Smith to that effect.

By Mr. WOODBRIDGE:

Who told you to do it? A. The Judge told me to do it.

By Mr. SEMPLE:

Q. Did you write a similar letter to that to General Spencer? A. I did.

Q. By whose order did you write it? By order of Judge Busteed.

Q. What was the date of the letter to General Spencer? A. I think I wrote both letters the same day.

Q. And by the same authority? A. By the same authority.

Spencer, however, at page 41, testifies that *Judge Busteed told him that he knew nothing about said letter or order.*

The effect of the foregoing letter was to require the Register to pay *all the money he received* in to the Clerk, or his business was stopped; that is, none of his cases could be filed. (See p. 279, Worrall's answers to R. H. Smith's questions.)

Soon after, however, Spencer's petitions were referred to him by Judge Busteed's order, without the fifty dollars being deposited with the Clerk, "as required by law."

The following questions, to answers by Storer, (p. 220) sets this point at rest:

Q. Will you say whether the petitions which were filed by Gen. Spencer in Gen. Spencer's district, after the writing of that letter which you have spoken of, were referred to him without the $50 being deposited as required by the letter; and, if so, when they were first referred; how soon after the writing of that letter? A. They were referred to him, but when they were referred to him I cannot tell; I am unable to state.

Q. By whose order did you refer the petitions to him without the money being first deposited?

Judge Busteed objected to the question and it was waived.

Q. After that letter was written were the petitions referred, without the payment of the $50, by the order of any person to you; and if so, by whose order? A. The Judge ordered me verbally to continue the reference of them to General Spencer.

Q. Did he give you any orders with reference to referring them to John O. D. Smith? A. Not any further orders.

Q. Did you receive any orders from any person in reference to referring cases to John O. D. Smith; and if so, from whom? A. After Blake left Montgomery, I received a letter from him telling me to refer petitions to Smith.

By Mr. WOODBRIDGE:

Q. At what time was that? A. He left the latter part of July, and, I think, in about a week or ten days I received the letter.

Q. As near as you can recollect how soon after this letter of February 13 was it that you referred cases to General Spencer without the payment of the $50? A. General Spencer, I think, came down to Montgomery upon the receipt of that letter, or within a very few days afterwards; and within a day or two I had orders to forward the petitions.

Q. Did he see the Judge? A. I could not say whether he saw him or not.

Q. Was the Judge in Montgomery? A. The Judge was in Montgomery, I think; no, I think he was down at Stanwood's.

Q. How far is that from Montgomery? A. I was never there; I am told it is about twenty miles.

Q. You say that a day or two after General Spencer called, you received the orders to refer his petitions; from whom did you receive those orders? A. I think when the Judge came up to Montgomery, he sent for me, and verbally told me to refer the petitions to General Spencer.

Q. How long was that after General Spencer was at Montgomery? when he came down after receiving your letter of 13th of February? A. I think it was only a few days; but I am not quite positive as to the time.

Q. Do you not know that General Spencer had seen the Judge? A. I do not know.

Q. Did the Judge say anything about having seen General Spencer? A. No, sir.

By Mr. SEMPLE:

Q. Are you certain as to the time? May it not have been as late as the 1st of April, or about the 1st of April, that General Spencer was there? A. I cannot speak positively as to the fact; I know it was not a great while after I wrote that letter.

Now, what had produced this sudden rescinding of this order to Spencer to pay in "as required by law?" How came these *requirements of law* to be dispensed with? The answer is, that Spencer had been to the Judge at Stanwood's plantation and had made him a "*present*" of $1,000.

Spencer says (p. 391):

I went to Montgomery, I think, about the last week of March, or first week of April, 1868, and I went down to a plantation in Lowndes County, where Judge Busteed was stopping, and gave him a draft on Mobile for $1,000. I did not give it with any intention of fraud.

There is no pretence that Spencer had been to see the Judge and got the order rescinded before the $1,000 were paid.

Spencer made the Judge—who is rich, as is proven by Worrall, p. 289, and lives in splendor in Jamaica—see Keffer's letter, to the Judge, page 202—a speech with his "*present*," and put the *donation* on the footing of a charity, (p. 40) and promised to get J. O. D. Smith to make a similar donation, and did procure Burke and Day to do so.

The letter enclosing Burke and Day's "present," is found at page 295. Spencer's "little speech," at page 40. Spencer's order given to the Judge is found at page 291. In the regular course of business the Judge's endorsement would be on it. *It bears no trace of having passed through his hands.* It is dated March 31, 1868, at Tuskaloosa. Burke and Day's letter is dated Huntsville, March 13, 1868. Huntsville is in the extreme portion of North Alabama—Tuskaloosa and Montgomery in South Alabama. Now read the reason assigned by Spencer for making the "present," and his "little speech," and the letter of Burke and Day together, and see how they present the strange coincidence of different persons, at such distances apart, assigning the same reason—*the poverty of the Judge*—for the "presents;" and consider the still more strange fact, that the reason *had no existence in truth.*

Read the following contortions of Spencer, pp. 48 and 49:

Q. You say you never had any conversation with Judge Busteed on the subject of fees; am I to understand you as saying that the conversation which you detailed yesterday in relation to the Mississippi fee bill between you and the Judge never took place?—A. I am certain that I never had such a conversation.

Q. As the one which you detailed in your first examination?—A. I am certain of that; I corrected that yesterday.

By Mr. ELDRIDGE:

Q. What particular remark of yours do you now refer to?—A. In your examination of me you asked me if I had ever conversed with Judge Busteed in relation to fees, and I answered you that I might have done so incidentally.

Mr. ELDRIDGE. Your answer was that you had done so.

WITNESS. But, on reflection, I am certain that I never did.

By Mr. ELDRIDGE:

Q. In your examination the other day you stated, in answer to my question, that you had said to the judge on two occasions that you trusted or hoped that he would not be hard on you about the fees, and that he said he would endeavor to be reasonable?—A. That probably was my answer, but since then I am satisfied that that was a mistake, and that I never had such a conversation.

Q. Did the judge say to you in any conversation that he did not think you would ever complain about the fees?—A. I think I never had a word of conversation with Judge Busteed on the subject of fees; I am positive of it; I talked with other registers and clerks, and with Mr. Worrell.

Q. Did not the judge say to you that you would have no occasion to complain about his taxing the fees?—A. I do not think he did; I think I was entirely mistaken about that.

Q. How should such an idea as that have gotten into your head?—A. The subject of fees had been a common conversation between the registers, and you asked me the questions very rapidly and in rapid succession; I did not intend then to swear, nothing more than that I might have had such conversation.

Q. Did you have no such conversation as that with any friend of Judge Busteed?—A. I have often talked with the registers and with Mr. Worrall about it.

Q. Is it not possible that you had such conversation with Judge Busteed's son-in-law?—A. I think it very likely that I had that conversation with Mr. Worrall, and I know that I have often talked with Judge Busteed's son-in-law, Captain Blake, in reference to fees; he is the clerk of the middle district.

Q. Did you have such conversation with Captain Blake?—A. I have no doubt in the world but I have had; still I am not positive about it.

Q. Have you never talked with the judge at all about fees?—A. I never talked with him about fees

Q. Did you not tell the judge that if he adopted the Mississippi fee bill it would make a great difference with you?—A. I never said anything of the kind to the judge; I am certain I never conversed with him on the subject.

Q. What has refreshed your recollection on the subject?—A. I have been thinking over the matter.

Q. Have you been talking with Judge Busteed?—A. He asked me the questions as to when and where and in what connection I had talked with him.

Q. Has he refreshed your recollection on the subject?—A. He has not refreshed my recollection.

Q. Has the conversation with the judge refreshed your recollection?—A. It has not.

Q. Has he changed your recollection on the subject?—A. I was not aware when I answered your questions that I was answering them in the way you say; you asked them very rapidly.

Q. Did I not repeat these questions over several times and in different forms?—A. I am certain, now, and I swear positively, that I never did have such a conversation.

Q. Has your conversation with Judge Busteed since you gave this testimony caused you to change your recollection or opinion?—A. I think not; the judge asked me after the examination was over when and where I had this conversation with him.

Q. Where did you meet the judge?—A. We walked part of the way down the avenue.

Q. Did you change your recollection at once on the subject?—A. I did not; but since then I have been thinking the matter over.

Q. When did you first make up your mind that you had no conversation with Judge Busteed on the subject of fees?—A. Yesterday morning; I endeavored to recall to my mind the substance of all the conversation I ever had with the Judge.

Q. At the time the judge said you were very liberal to him, was there anything said about fees?—A. No, sir.

Q. The judge said, when you handed him this letter, that it was very liberal.—A. Yes; he said it was a very liberal donation.

Q. Was not that the occasion when you said to the judge that he must not be hard on you about the fees?—A. I am positive I never said so.

Q. How is it possible that you made such a mistake as to attribute that conversation to the judge.—A. It is a subject which I had not thought of before, and I did not intend to say that I had such a conversation, but that I might on one or two occasions have made such a remark. I am willing to swear that to the best of my memory and belief, and I am positive about it, I never did have that conversation. That is the evidence I wish to give. I endeavored to recall all the conversations I ever had on the subject, and I am certain that the subject of fees had never troubled me any. I never really had any idea that the judge would adopt the Mississippi fee bill.

Q. Did you not talk with him about the difference between the two fee bills?—A. I am certain that I never did.

Q. All the conversation you had on that subject was with Mr. Blake and with other registers.—A. Not all; I have talked with lawyers and with a good many people about it.

Q. Can you state in distinct the conversation you had with Captain Blake on that subject?—A. I cannot go into details, or state distinctly the conversation.

Q. Can you state the person with whom you had the conversation which you attributed to the judge?—A. I did state that; I thought it was with Mr. Worrall.

Q. Do you recollect of any two distinct conversations that you had with Worrall in which such language may have been used?—A. I remember more than two instances that I conversed with him on the subject of fee bills; in fact we never met during that time without talking about fees.

Q. Then you have in your mind no two distinct conversations that may have been the conversations which you think you had with the judge?—A. I have not; I did not intend to swear the other day that I had two conversations. The answer which I intended, and which I supposed I was giving, was that I might incidentally have had those conversations, but since then I have been thinking over the subject, and I am certain I never had.

And now read the following evidence of William Smith, Governor of Alabama, pages 180 and 181:

By Mr. SEMPLE:

Question. Governor, will you state to the committee any conversation which you had with General Spencer in relation to the payment of any money by him to Judge Busteed.—Answer. I had two conversations with General Spencer upon that subject.

Q. When was the first conversation?—A. I do not remember when it was exactly.

Q. Give me the time as near as you can.—A. It was some time in July last.

Q. The first conversation?—A. Yes.

Q. Do you remember writing a letter to me?—A. Yes, sir.

Q. Dated Opelika, July 2, 1868?—A. Yes; I do not remember the exact date, but I remember writing to you from Opelika.

Q. That is your handwriting.—A. Yes.

Q. Was the first conversation you had with General Spencer before that time or after?—A. It was after that time.

Q. Will you please state when was the conversation and where was the conversation?—A. The first conversation was some time after I wrote that letter, at Pizzari's. In this conversation Gen. Spencer said to me that he had to pay Judge Busteed $1,000 in order to retain his business, or obtain the business to which he was legitimately entitled by virtue of his office. I had heard of it before, and I asked him if it was true; he told me that it was. I wrote that letter upon information I had received from others that such was the fact.

Q. Please state, governor, all that passed between you and him in that conversation.—A. I do not remember particularly what was said. We talked a good deal about it. He spoke of it as a very great hardship upon him. He complained of Judge Busteed, and said that he could not help himself; he was in such a condition he was compelled to do it. We had a considerable conversation about it. I do not remember the whole of our conversation, of course.

Q. Did he say anything of the character of the constraint under which he acted?—A. I do not recollect that he did at the time. At a subsequent conversation with General Spencer on the same subject, some time after that, we talked more about it. I had repeated that conversation to others; it was not told to me as a secret at all; there was no secresy enjoined upon me; I did not regard it as a confidential communication in any way. I had spoken of it to very many others in the city of Montgomery. Subsequent to that, a gentleman in the city of Montgomery told me (and that was the reason why I came to have a second conversation on the subject with General Spencer) that he had met General Spencer at a party at Miss Glasscock's, in Montgomery, and had had some conversation with him with reference to the statement which I had made that he had told me that he had been obliged to pay this sum of money to Judge Busteed, and, said he, "My opinion is that General Spencer is not going to stand up to what he said to you." I expressed my astonishment at the statement; but very little was said. The next day Gen. Spencer came into my office. I called his attention to it, and told him, "I understand you will deny what you said to me about Judge Busteed." "No," said he, "what I deny is that I entered into any corrupt bargain with Judge Busteed; but I considered that what I did I was compelled to do; for I had no way to help myself, and I paid him the $1,000 just as I would have paid my money or given my pocket-book to a robber with a pistol at my breast." That is, in substance, what he said to me in the second conversation. That is all, except that we talked considerably in the same strain. Mr. Dalton, my private secretary, was in the room at the time. I do not recollect whether any other persons were present.

Q. Had you sent for General Spencer, or did he come of his own accord, to your office?—A. I think he came of his own accord; I do not remember sending for him.

Q. What office is it you refer to?—A. The executive office at Montgomery.

Q. You are Governor of the State, are you?—A. Yes, sir.

And read J. O. D. Smith's account, pages 173 and 174, how Spencer complained that he had been black mailed, and how he advised Smith to submit to it; and remember that *charges were preferred against Judge Busteed before he got Smith's money, and that he dared not use Smith's check, but did not return it.*

Can Spencer's transaction be mistaken! can charity cover it!

The *full* discussion of this matter is left to Mr. Semple; but enough has been said to show that it falls under the inhibition of the statute against *bribes, presents or rewards* to Judges, of April 30, 1790, found 1 Stats. at large, 115, 1 Brightly's Digest, p. 212.

The immediate object of the discussion of it here, is to get at the undoubted predicate that Judge Busteed takes money from the officers of his court, and takes it upon an assignment of false reasons for its presentation. The especial application to be now made of the fact is, if Judge Busteed took money from officers who bore no near relations of friendship to him (as it is shown Spencer and Day and Burke did not) under the above circumstances, what are we to infer became of large sums of money robbed from suitors, by the Judge's legerdemain, as will now be shown?

THE CASE OF MORRIS AND THE FIVE THOUSAND DOLLARS GOT BY JAKE WILSON FOR JUDGE BUSTEED.

Jacob Wilson is an ignorant, vulgar Russian Jew, who cannot read or write, and speaks English with a strong accent. He came with the Judge in 1865, and continued to act as his menial and body servant. He became deputy of Jno. Hardy, the Marshal; he cried all the sales made by the court, and received large special fees as auctioneer, on the allowance of the Judge. He received as auctioneer, by Judge Busteed's allowance, on motion to retax cost in the Natchez cases, $1,430 10. (See P. Hamilton's deposition, and the printed statement given in evidence by him.) Judge Busteed had rendered a judgment against Josiah Morris, in Montgomery, for about $30,000, (which now stands reversed by the Supreme Court of the United States for the want of jurisdiction.) Morris gave bond, and applied for a supersedeas within the time prescribed by law. It was refused on the ground that he had taken a writ of error, (which he had a right to take,) and should have taken an appeal, (p. 5.) Morris, upon being informed of the Judge's objection, filed with the clerk (the Judge having gone to Mobile) an *appeal* bond within the time required by law to obtain a supersedeas, (p. 5.) The judgment was rendered December 17, 1866, (p. 1.) The appeal bond was filed with the clerk December 27, 1866, (p. 5.) Judge Busteed put his initials to the bond December 29, 1866, the day it was presented to him in Mobile.

He came to the Judge with his sureties at Mobile. The Judge advised him to settle the case with the District Attorney, J. Q. Smith. Morris said he would pay $5,000 to settle it. The Judge promised to meet him in Montgomery, saying—"Mr. Morris, if you are willing to do that, and Mr. Smith is not willing to allow me to settle it for the $5,000, I will grant you relief, as you have asked for it, by giving you the bond." The bond was to be made at once and left in the Judge's hands. As Morris left the Judge's room to get his bondsmen, Jacob Wilson went with him. Judge Busteed called Wilson back and had a short interview—he returned and told Morris the Judge wanted the $5,000, then Morris paid it to Wilson, who

says he kept it in obedience "to the eleventh commandment:" "If you have got anything keep it." (p. 298.) See Morris', Powell's, and S. F. Rice's depositions.

Omitting details, the Judge went to Montgomery, pretended to wish to grant the supersedeas to Morris, but J. Q. Smith, then District Attorney, objected, and the Judge went to New York. (See S. F. Rice's deposition.) The sequel was, Morris lost his $5,000, had the judgments to pay, and when he got his case reversed, found that nearly half the money, under pretence of an order of distribution, secretly made by the Judge in behalf of a secret informer, had gone into the pockets of J. Q. Smith and Lawrence Worrall, (except a little over $3,000 given the so-called informer.) See the record of this case on file, and see McCroskey's evidence p. 130 to 133.

Let it be noted, too, that the money which had been collected in this case was deposited in the National Bank at Selma, which had failed, and that J. Q. Smith *got the money from the proceeds of the Freedmen's Bureau sales paid by Walsh, Smith & Co., the purchasers at those sales.* (See evidence of Robt. W. Smith, of the house of Walsh, Smith & Co., taken in Mobile. McCroskey p. 130.) *The United States got nothing.*

This narrative very fairly introduces to the committee J. Q. Smith and his relations to the Judge, but he will be noticed hereafter. Let us proceed with Jake Wilson.

Wilson says (p. 298) that he told the Judge, the next day, that Morris had given him $5,000. Busteed considered this an attempt by Morris to bribe him. (See deposition of Saffold p. 347 to 350.) He stated to Saffold the time and place, and such facts attending the transaction as to leave no doubt that he was privy to the act. He told Saffold that Wilson still had the money, and asked advice as to the proper course he should pursue. Saffold advised Busteed to require Wilson to pay back the money to Morris, &c. To this, Judge Busteed, disclaiming that he had anything to do with Wilson's getting it, said he did not propose to have anything to do with the refunding of it. (p. 347.) In this conversation he represented Wilson, "as a person in whom he had great confidence, and who was very faithful to him," (p. 347,) and said "he is as faithful to me as my wife." p. 350.) If this be so, then Judge Busteed got that money—for it was paid to Wilson for the Judge. (See Morris' deposition.) That any sane man should have given $5,000 to an ignorant, contemptible fellow like Jake Wilson for his influence with the Judge will not be believed. Again, the money was paid January 17, 1867, (p. 4.) The conversation with Judge Saffold was in the latter part of January or first part of February, 1867. Judge Busteed then told Judge Saffold that Wilson still had the money or *that it was not spent*, (p. 347.) Now, how did he know this if he was not participating in the act?

Judge Busteed's visit to Washington city, when he had the interview with Judge Saffold, was to prevent Hardy, the Marshal—who

had Wilson for a deputy—from being turned out of office on charges of corruption, based in part on accusations from General Swayne, then military commander of Alabama, (see Swayne's evidence) and in part on proof by affidavits found from pages 119 to 121 of the printed proofs, which show that Hardy had furtively appropriated a large part of 239 bales of cotton, which were in his custody as Marshal, and which affidavits Judge Busteed saw when in Washington. (See evidence of Herndon, p. 125, and of C. R. Rice, taken in Mobile.) See evidence of Gen. Swayne, p. 157, 158, 159 *and passim.*

After Hardy was removed—after Judge Busteed knew that Wilson had got this $5,000—he (Judge Busteed) applied to Healy, who became Hardy's successor, to appoint this same Jake Wilson his deputy, (p. 362) but, making a virtue of necessity, came to Healy in a day or two, and told him he had better not make that appointment. (p. 363.) Wilson was still attending on the Judge. (p. 262.)

But more than this: Remembering that Morris paid Wilson the $5,000 on *January* 17, 1867—that Judge Busteed knew it immediately; that in the *latter part of January or early in February*, he spoke to Judge Saffold about it in Washington; that Healy came into the Marshal's office as Hardy's successor about *April* 1, 1867; (p. 362;) that it was soon after Healy came into office that the Judge applied to have Wilson appointed his deputy, and withdrew the recommendation under a silent rebuff; (p. 362, 363;) let us turn to Mr. Manning's evidence at foot of p. 238 and 239. It reads:

As solicitor I procured a decree, at the spring term of the Court in 1867, (I think in April,) for the foreclosure of a mortgage in the case of Sanford against Herrin, executor, and others; and a sale of the mortgaged property was ordered to be made by the Clerk of the Court as master in chancery. The debt amounted to $22,000 odd. The property was sold on the first Monday in July, 1868. Mr. A. W. Trimble (misprint for N. W. Trimble) was the clerk, and acted as master. Judge Busteed was, at the time, at the Battle House, wounded and incapable of leaving his room.

Q. From the wound he received from Martin?

A. Yes, sir. The sale was made by Jacob Wilson, as auctioneer; a man who was an indifferent auctioneer, and who spoke the English language rather badly. He did nothiug in the way of having the property advertised. I prepared the notice myself, which was signed by Mr. Trimble and published regularly. This man Wilson acted as auctioneer. He was engaged 15 or 20 minutes in making the sale. The property sold for $20,840. My client at the North desired to have the amount coming to him in a bill of exchange, and that arrangement was made. I sent to the Clerk to get a copy of the bill of costs, and this bill which I now produce was sent me. For services as auctioneer there is a charge of 2½ per cent. on $20,840, amounting to $521. This was in addition to all other fees allowed by law to the Master, who has charged his own special fees at $942,30. I insisted with Mr. Trimble that the auctioneer's fees should be paid out of his commissions, and that he ought not to have employed Mr. Wilson as auctioneer and allowed him 2½ per cent. To this he replied that he had to do as Judge Busteed required it in such cases. This is the same Jacob Wilson that has accompanied the Judge, I believe, as servant, on all his visits to Mobile except one, I think, and whom I saw standing

at his office door in New York, and who invited me to the Judge's office there.

Q. Subsequently, or before that time?

A. Before it, I think.

If Trimble, the Clerk, had not asserted the fact, could we doubt but that Judge Busteed had this man Wilson to make the sale?

Not only do we find Wilson executing the judicial sales of the Court, but we find Worrall, (the holder of almost all the offices in the court,) who stood in the nearest relations to the Judge, (p. 273,) and who was appointed Register in Bankruptcy the first of December, 1867, (nearly a year after Wilson got the $5,000 from Morris,) putting large amounts of goods, turned over by bankrupts, into Wilson's hands, and allowing him to have the custody of them—in one case, at least, for near a month—contenting himself with the security furnished against his stealing them, with the fact that "*he took an oath* for the faithful performance of his duty." (p. 281.)

Jacob Wilson will incidentally appear again in the discussion of other charges. For the present we will leave him with the following account of him and the Judge by three witnesses:

Gen. Swayne (p. 157) is asked:

Q. Did you know Jacob Wilson. A. Yes, I think I did; that is to say, there was a man who acted as the Judge's body servant and sort of Deputy Marshal at Mobile who was called Jake, and my impression is that he was called Jake Wilson.

Judge Cuthbert (p. 72) shows that he was the body servant of the Judge, in constant attendance upon him, and doing menial services for him.

Wilson conducted the sale of the 454 bales of cotton, made under the order of the Judge, before referred to, and found at page 75, entitled "Charles C. Newberry *vs.* 66 bales of cotton," &c. For crying the sale the Judge allowed to Wilson $1,430, under the name of auctioneer! (See p. 110 of printed evidence.)

Peter Hamilton,(p. 86,) in stating the grounds on which he moved to set aside the sale, mentions that it was conducted by Jacob Wilson, of whom he thus speaks: "As I conceived, a very incompetent person was appointed to conduct the sale." "He appeared to be a servant of the Judge." (p. 94.)

That Wilson was a body servant and *factotum* of the Judge, see further evidence of Judge Dargan, Judge Jones and J. Little Smith, taken in Mobile.

THE CASE OF 239 BALES OF COTTON CLAIMED BY NUNN & THOMPSON FOR THE PLANTERS' FACTORY.

The Planters' Cotton Factory, of Autauga, purchased from various persons during the war, cotton for carrying on their operations. Some small purchases had been made from the so-called Confederate Government.

At the close of the war the factory ceased business, and deter-

mined to sell its stock on hand. This stock was put in order for shipment to Mobile and sale. About six hundred of the bales were seized up the country by the Marshal, on a libel by the United States, from the U. S. District Court at Montgomery, and had been stipulated for by the factory, and this case is not yet disposed of.

This cotton came to Mobile. The first that came, embracing that bought of the Confederate States, had been shipped to Liverpool. James M. Tomeny, the Treasury Agent in Mobile, seized the cotton in question. (239 bales.) The propriety of the seizure was heard on proofs by the Secretary of the Treasury at Washington, and the cotton was released by Mr. Tomeny on the order of the Secretary. In the meantime the 239 bales had again been seized on libel by the United States in the U. S. District Court of Mobile (the libel in Montgomery still pending).

The cotton had been put in good order and rebaled before it was sent to Mobile, and was safely stored, in such good order, in a reputable warehouse in Mobile, which was fire-proof. Hardy, the Marshal, changed it to another warehouse, further from the river, and it was taken to Cleveland's pickery, where the bales were cut and half the cotton taken out and put up in other bales marked differently. The bales so reduced, with other inferior cotton, were then sent to the other warehouse, under pretence that it was the same cotton under seizure.

John Hardy and Jake Wilson had the care of the cotton, and the pickery man altered the bales by instruction of the Marshal or his Deputy. See the positive proof of this fact by C. R. Rice, taken at Mobile; see, also, Theodore Numm's evidence, taken at Montgomery; W. N. Thompson's, page 213; Jones M. Withers', page 247, (printed evidence,) and the affidavits found in Herndon's evidence, 118 to 122. See, also, Withers' evidence generally.

The following facts are beyond dispute:

That the cotton came to Mobile in good order and was safely and securely stored in a fire-proof warehouse.

That its removal to another warehouse created large additional and unnecessary expense. (See foregoing, and also P. Hamilton's evidence.)

That it was removed to a more distant warehouse.

That it was stolen as stated above.

The proposition is that the larceny was the act of John Hardy, Jake Wilson and Judge Busteed. If we follow the circumstances they will establish the fact.

Cotton is always insured in a named warehouse. This cotton was insured in the original warehouse. Its removal forfeited the insurance.

Cotton pays storage at so much per month or less. Its removal doubled the warehouse expenses.

The drayage and handling in removal created other considerable expenses.

The original warehousemen were respectable and responsible.

There could, therefore, have been no good reason for changing the warehouse.

Even if the cotton had not been in good order before, it certainly should have been after it went through the pickery, as the only business of the pickery is to put it in good order.

Cotton in good order and in a fire-proof warehouse is not liable to damage or waste, as every person knows.

There could, therefore, be no reason for selling it, pending the suits.

If the substituted cotton should remain, it would be a standing witness of the larceny committed. If sold, and taken off by a purchaser, it would cease to tell tales.

The first step—and that by John Hardy—was a motion to the court *to sell the cotton*, and to employ Alexander McKinstry, for a fee *paid by him*, to get an order of sale from the court. (Hardy's evidence, pp. 372, 373.)

That the proceedings in respect to the sale of this cotton may appear, the following evidence of Thomas H. Herndon on the subject is inserted at length:

The first active part I took in the case was on the 21st of May, 1866; I think on that day, about 9 or a quarter-past 9 in the morning, I received a written notice, signed by Lawrence Worrall, acting district attorney, informing me that at 10 o'clock that morning a motion would be made in the district court for the sale of that cotton. At 10 o'clock I appeared in court—my recollection is that it was stated in the notice, or if not in the notice, in the motion, that it was made on the ground that the cotton was perishable or deteriorating—at 10 o'clock I appeared in court; the motion was called, and I stated that on account of the shortness of the notice I had had no opportunity to consult with our clients and get up counter testimony as to the condition of the cotton, and I desired that the motion should lie over until the next day, or some future time, when I could be prepared to meet it. Judge Busteed seemed reluctant to grant the indulgence, but did grant it until the next morning at 10 o'clock. At that time Judge William G. Jones (being, in fact, the leading counsel in the case) came into court and made a counter-motion, which is on record, I presume, to dismiss the case for want of jurisdiction, or, in case that motion was decided against the claimants, to be allowed to stipulate for the cotton. To enable the committee to understand the matter, I will have to state that there were a great many exceptions filed to the libels, and, amongst others, against the jurisdiction of the court to entertain a libel of that sort and in that case. The only testimony introduced on the part of the Government, I believe, was that of John Hardy, the marshal, and Jacob Wilson, deputy marshal, who were examined, stating as an opinion, from the condition of the cotton, the necessity for the sale, merely saying, "it ought to be sold." Judge Jones, in presenting the question of jurisdiction, began to argue the case before the court, and in the course of the argument brought the attention of the court to the fact that this identical cotton was already embraced in a previous libel, filed in the court of the middle district at Montgrmery. He then produced a duly authenticated transcript of the record of proceedings in that case in the middle district. Judge Busteed at once, without inspecting the record or asking for it at all, said he had no difficulty in deciding that there was no case pending in the middle district; that he had not been in the middle district for a certain length of time.

Q. Was there, in fact, any case pending in the middle district in refer-

ence to this same cotton?—A. I have not now a copy of those proceedings, and only speak from memory; there was, however, a proceeding embracing the same cotton. My information, which is from hearsay, is that a libel had been filed for something over 600 bales of cotton seized in the middle district. The cotton was bonded by the Planters' Factory or by Nunn & Thompson, and 239 bales of that same cotton, after being bonded, was shipped to Mobile. When it arrived at Mobile, J. M. Tomeny, then agent of the United States Treasury for that district, seized the cotton, and pending its seizure, and while in possession of Tomeny, the libel of information that I have spoken of, was filed in Mobile. After the question of the pendency of a suit in Montgomery for the same cotton was disposed of in the manner I have described, Judge Jones brought to the attention of the court the fact that this cotton had been seized by Mr. Tomeny, the treasury agent; that all the facts had been submitted to the Secretary of the Treasury, who had passed upon them and had ordered Mr. Tomeny to release the cotton. Judge Busteed asked him if he had the order of the Secretary of the Treasury; Judge Jones told him, I think, that he had a copy of it. Judge Busteed told him to read it; he read it. Judge Busteed then told him to pass the paper to the court, which he did. The judge then told him to take his seat; and said the decision of the Secretary of the Treasury, so far from commending the case to his favor, absolutely disentitled it to any favor whatever at the hands of the court. Judge Busteed then commenced the delivery of a very severe and pointed rebuke upon the President and his cabinet, and particularly upon Mr. McCulloch, saying that, "If the cabinet would attend to their business, and Mr. McCulloch to his greenbacks, the country would be in a better condition;" that "Mr. McCulloch had undertaken to decide, more than a thousand miles from where the case was pending, by telegraph, from representations and recommendations obtained," (as he intimated, in terms,) "by bribery."

By Judge BUSTEED:

Q. In terms, did you say?—A. No, but in substance. He did not say (use) the word *bribery*, but that was the impression made upon my mind by his remarks. I did not understand the language used as applied to Mr. McCulloch, but to some one else. He said he "would teach the President and his cabinet that he was as independent of them as they were of him;" that "they could not interfere with the administration of justice in his court by proceedings of that sort." These remarks of Judge Busteed covered some 15 minutes, perhaps, in reference to the cabinet, and especially to Mr. McCulloch. After Judge Jones had concluded, I rose to say something in the case, and began to discuss the exceptions, and show that the exceptions were well taken, and ought to be a consideration to induce him not to order the sale of this cotton. He told me he had no doubt about the jurisdiction of his court in the premises, and that he did not desire to hear anything on the subject of jurisdiction or exceptions; he wanted to hear some reason why the cotton should not be sold. I then directed my remarks to that point. He stopped me directly and said: "Mr. Herndon, my mind is infallibly made up on this subject; this cotton must be sold." He then said it was his invariable rule, in suits where the United States were interested, to order the sale; "but," said he, "if you desire to make a speech, I will hear it." I told him I did not desire to made a speech if his mind was infallibly made up, and took my seat. He then called my attention to another suit in which I was interested, and which, he said, might form an exception to his ruling. In the case of the 230 he made the order that the cotton should be sold after ten days' notice by publication in the newspapers; that was on the 22d of May.

By Mr. ELDRIDGE:

Q. Did he hear any argument upon the motion at all?—A. None except what I have stated. The counsel for the United States, Mr. Worrall, I think, did not say a word.

Q. Did you offer any evidence in regard to the situation of the cotton?—A. We offered evidence tending to show that the cotton was in a fireproof warehouse, in a dry, safe place, where cotton was usually stored in Mobile, and I am not sure whether anything was said about its being insured, or whether the fact was that it was insured or not; my impression is that the cotton was under insurance by Nunn & Thompson, and that we offered to show that fact; I am not positive.

Q. What was, in fact, the condition of the cotton?—A. I never saw the cotton, and I do not think we showed, on that occasion, anything about the actual condition of the cotton; we only showed its condition at the time it was seized. The proof was that when the cotton was seized it was in good condition.

Q. What was the pretence or proof on behalf of the United States showing the cotton to be in such a situation as necessitated its sale?—A. The proof of the witnesses, Hardy and Wilson, only; their testimony was very brief. They alleged that the cotton was in a perishable and wasting condition; I do not remember from what cause. My recollection is that Mr. Hardy said that in his opinion it was necessary to sell the cotton to prevent its deteriorating. If he stated any specific circumstance about it I do not now remember it.

Q. Was it shown that any calamity or casualty had happened to the cotton.—A. No, sir; nothing of that sort was shown; there was no single fact shown that I remember; we showed, as I said, that it was in a fireproof warehouse. I do not think the examination lasted more than 15 minutes altogether. That was the last I heard of the cotton until about the 20th of June, 1866. On that day I called on Mr. Worrall, the acting district attorney, seeing that the cotton was advertised for sale, and asked him if the cotton was to be sold. He informed me that he had forwarded the proceedings in the case to Washingtan city, but had received no reply.

By Mr. SMITH:

Q. How did he come to forward the proceedings to Washington city?—A. He had been ordered, by a telegraphic dispatch from the Attorney General, to stop proceedings in the case, and forward all the papers—I think the dispatch read—"to Washington." Mr. Worrall said to me, in the same conversation, that Judge Busteed had called his attention to it, and asked him if he had received anything from Washington city upon the subject; that he could not allow the delay of the sale any longer, and that he (Worrall) had forwarded a report of the proceedings, but had received no reply. On the 27th of June—the sale having been advertised to take place on the 28th—John Hardy, the marshal, happened into my office, and I mentioned the fact to him that I saw the sale was advertised, and asked him if he intended to proceed with the sale. He replied that he had no orders to the contrary. I asked him if he had received a dispatch from the Attorney General ordering the sale not to be made—a second despatch. He told me that he had not received any dispatch. I then exhibited to him a copy of a despatch which had been forwarded to us by Waterson & Crawford, of this city. He said he had not received the dispatch, and that unless the sale was postponed by Judge Busteed's orders it would be proceeded with. In order that nothing might be left undone, I made a copy of the despatch, and had it sent to Mr. Worrall. Whether it was served upon him or not I do not know; it was sent to him by a lad in our office named George Haig, who was the errand boy of the office.

On the 28th the cotton was sold—at least that is my information; I did not attend the sale.

By Mr. ELDRIDGE:

Q. Do you know the cotton was sold?—A. Only from hearsay I state it to have been sold. I have examined the records and the files of the district court in this case, to see if there was any report of the sale, but I was unable to find any report on the files; in fact I found the papers themselves in rather a confused state, not in a separate package, and the libel itself was not on the file, that I could find. I examined the records and minutes of the court to see if there was any report made, but I did not find any. I made this examination about the 1st or 2d of July, 1868, as I am able to state by a memorandum made at the time. I also went into the office of General Healy, the marshal, to see if there was any report of the sale there, but he had no memorandum of it on his books. He said it would probably be on the books of Mr. Hardy, who was not then in the city. After the 28th nothing more occurred in court in regard to the case until the 22d of December, 1866, when I was sitting in court, and J. Q. Smith, district attorney for the middle district of Alabama, being there in court, called up the case of 600 and odd bales of cotton. I heard the call made casually, and, supposing I had no interest in it, paid no attention. The motion was to transfer the case to the district court of the middle district of Alabama. Judge Busteed, turning the leaves of the docket as if referring to the case, asked if the district attorney of the southern district consented. Something was said about that—I do not remember what, paying no attention to the matter. Mr. Martin, I think, was then district attorney, and I do not know whether he was present in court or not. Mr. Percy Walker, an attorney, sitting by me when this order was made, asked if that was not a case in which I was interested. I told him I was not interested in any case of that title. For greater caution, however, I got up and asked Judge Busteed if that was a case which had originated in Montgomery in which 239 bales were involved. I made this inquiry of the court before another case was called; stated that, as the case was not called by its title, I did not recognize it as the one in which I was concerned, or I would have opposed the motion to transfer, and asked that the order be set aside so that I could be heard. He referred me to J. Q. Smith, who said it was. I then recognized it as the case of the 239 bales. The order for the transfer had, however, been made. The Judge said I could make a motion to set aside the order, and doubtless the district attorney would consent to its being heard. I then asked that it might be postponed until the next day, Judge Jones, the principal counsel in the case, not being present. The next day the motion to set aside the order of transfer was called up, and sustained by Judge Jones in a few remarks. Judge Busteed heard what he had to say, and J. Q. Smith opposed the motion to set aside the order, upon the grounds that the court had no jurisdiction in the case, and read a decision from Howard's reports, in an Illinois case, which showed very distinctly, as I understood it, that the court had no jurisdiction. The court, after hearing what he had to say, refused the motion to set aside the order, stating that the argument of Judge Jones would be a very good showing in opposition to granting the order originally, but a very poor showing to set aside the order which had been made. I remarked to J. Q. Smith that if the court had no jurisdiction, as I believed it had not, I thought, instead of being transferred it ought to have been dismissed.

Q. Did the court hold that it had no jurisdiction?—A. Judge Busteed did not decide that; he only referred to the argument of Judge Jones, that he had been taken by surprise by the motion, and asked that the order to transfer might be set aside. We had raised the question of jurisdiction in support of the exceptions we took on the motion to sell, on the

ground that this was a part of the 600 and odd bales which had been libeled in Montgomery, and the Judge said he had no difficulty in deciding that he had jurisdiction. This was on the 22d day of December, 1866, the cotton having been sold on the 28th of June, preceding.

By Mr. SMITH:

Q. Was there any such case on the docket as the 600 and odd bales which was called when the motion to transfer was made?—A. There was no such case there which I knew by that title; we had none of that title. If I ever knew I have forgotten how many bales were involved in the case in Montgomery which covered these 239 bales, and the case being called by J. Q. Smith as the United States vs. 600 and odd bales instead of 239 bales, misled me. The title of this case on the docket was the United States vs. 239 bales of cotton.

Q. Was the fact brought to the attention of the court when you made the motion to set aside the order, that the case had been called by the wrong title?—A. It was.

Q. Was the fact denied by the other side?—A. No, sir.

Q. Did the Judge recall it?—A. He did not say whether he would or not; he did not deny it, nor did Mr. Smith, and the motion to vacate the order was made immediately after the order was granted. I should not have noticed the case at all if Mr. Walker, who sat by me, had not called my attention to it. Nothing further occurred in regard to the case until, according to the minutes of the court, the 21st of May, 1867, when Mr. Rufus F. Andrews rose in court, and calling the attention of the court to it, stated that the case had been transferred to Montgomery in his absence without his consent; that he appeared to represent the United States, and asked that the case be reinstated on the docket in Mobile. I was present in court. Judge Busteed asked me if I had anything to say why the motion should not be granted. I said I had opposed the transfer originally, and of course had nothing to say in opposition to the case being reinstated.

Q. In the meantime J. Q. Smith had been removed from his office of district attorney?—A. I so understood; the order to reinstate the case having been granted, Mr. Andrews asked that the case be set down for trial the next morning; I stated that it would be impossible for me to try the case the next morning; that I had supposed it would be tried, if at all, in Montgomery, and had sent all the papers in the case to Montgomery; that the witnesses were at a distance, and that it would be impossible for me to get ready. Judge Busteed replied to that, that the case had never been transferred, and that it was my business to know it; but Mr. Andrews said he appreciated the condition of the case, and consented for it to be laid over until the second day for trial, and it was so laid over.

Q. How far were Nunn & Thompson, the claimants, from Mobile at that time?—A. They lived in Autauga county, I supposé 200 miles from Mobile. I do not know the distance, probably half a day's ride, from Montgomery, and not connected with Montgomery by railroad or telegraph, so far as I am aware of; I have never been there. The case, however, was not tried, and I have no recollection of its ever being called from that day to this, and do not know what became of it. I examined the docket in the front part of the book, where I should expect it to be found, and asked the clerk what had become of it. He turned to the back part of the book, and there I found it entered with other cases, which the clerk said were cotton cases. It has certainly never been called in my presence.

Q. Look at the affidavits now shown you, and state if you have had any conversation about them with Judge Busteed.—A. I never showed these affidavits to Judge Busteed; copies of them were forwarded by me to Waterson & Crawford, our correspondents in Washington city, to be laid before the Attorney General. Some time after the transaction I have been speaking

of occurred, (the date I do not remember,) I happened in court one day when there was a case pending in which the firm of Hurtel & Hammond were parties. After sitting down in court I soon discovered the nature of the case, and thinking it might throw some light as to what had become of this cotton, I listened to it; I was about starting out of the court-room when Judge Busteed called me to the bench and asked me if I was not counsel in the case of 239 bales of cotton; I told him I was; he told me he had seen in Washington the affidavits I had sent there on the subject, and that they had had a large influence in causing the removal of Mr. Hardy; he said the affidavits very clearly showed the substitution of the cotton, and that if Mr. Hardy was guilty of it "he ought not only to have been removed, but hung;" but that he was satisfied that Mr. Hardy was not guilty; that "he had not been concerned in the substitution;" and he had no doubt I would be glad to see Mr. Hardy vindicate himself; and following this was some conversation highly eulogistic on his part of Mr. Hardy. I told him I would be glad to see Mr. Hardy, or any other public officer, vindicate himself from so grave a charge. He then said that he had the most indisputable, or incontrovertible (I do not remember which word was used) evidence that Mr. Hardy was not guilty, and that if I would make a motion like the one then pending in court, we would get at the guilty parties. I simply declined to do anything in the matter. He said he wished to see me again on the subject, but did not.

Q. Why did you decline?—A. I did not state my reasons to Judge Busteed. I had several reasons. In the first place, the United States had seized the cotton, and I considered it as much the duty of the court as it was of the claimants to ferret out such a proceeding; in the next place, I did not believe that Hurtel & Hammond were guilty of the charge; they were warehousemen, and were men of as good standing as any in Mobile.

By Mr. ELDRIDGE:

Q. In this conversation with the judge at the bench, when he spoke of ferreting out the guilty parties, did he intimate who he thought was guilty?—A. No, he did not, except in this way: Hurtel & Hammond were the parties against whom the motion was then being tried in court, in a similar case where cotton had been substituted, and he said that if a similar motion was made by me in the case of the 239 bales, we would get at who were the guilty parties.

By Mr. SMITH:

Q. Did I understand you to say he announced beforehand that John Hardy was not guilty?—A. He said he had "indisputable, or incontrovertible, evidence that John Hardy was not guilty of the charge," and then said a good deal in his praise as a public officer and as a man.

Q. He made no proposition to inquire as to whether John Hardy was guilty or not?—A. The only proposition he made I have stated, and when I left the interview was suspended, I supposed to be resumed at another time.

Q. Do you say that case has never been tried?—A. Not to my knowledge; I have not been in Judge Busteed's court regularly for some time, and cannot say that it has not been called.

Q. Do you know what became of the proceeds of the sale of this cotton?—A. I do not.

To fully understand the force of the foregoing testimony, let us look at facts in connection with those attending the Jones M. Withers' cotton.

In 1866 Withers, as factor of a Mr. Williamson, had received for

sale fifty-seven bales of cotton, and Hardy seized them under process against Williamson.

Withers paid off the demand, getting from Hardy an order on the warehouse for the cotton, which was given with reluctance. When Withers sent for his cotton he received different bales altogether: inferior, unmerchantable trash. On investigation it was ascertained that the original cotton had been stolen while in Hardy's possession and other, of very inferior quality, substituted.

Inquiry showed that the Withers cotton had been manipulated by the same parties, and had gone through just the same shifting from and to the same warehouses, and had been taken to the same pickery that the Planters' Factory cotton had. Withers demanded his proper cotton. After much shuffling by Hardy, Withers went to Judge Busteed, who, with great show of virtue, *became satisfied of the wrong without any examination*, and sent for Hardy, telling him the matter must be righted, &c., and Withers was then turned over to Hardy.

Hardy desired Withers to sue Hurtel & Hammond, the warehousemen, which he refused to do, believing that Hardy and Wilson were the thieves. Busteed then had the matter brought before him, just as Hardy wished it to be, by motion against the warehousemen. The Judge selected the lawyer, and the farce was enacted of instituting and hearing a motion in the court at Mobile in a case pending in the middle district at Montgomery.

Now look at the Star Chamber proceedings on this motion, narrated by Thos. A. Hamilton, and the bullying of the young witness; then read Withers' and Hamilton's account of this judicial farce, ending in no legal result; see the jockeying and shuffling of Hardy up in the Custom-house, near Judge Busteed's room; and the finale of Wilson's being sent to New Orleans to Joseph C. Palmer for the money, and of its payment to Withers in Judge Busteed's presence.

The warehousemen were dragooned into a loss of $1,800, and no doubt thought they got out of Judge Busteed's clutches on good terms.

No mere description of this transaction can do it justice. The depositions of Herndon, Withers and T. A. Hamilton have to be studied together to realize its enormity. Judge Busteed found he was caught, and, on the principle of the thief who avoids pursuit by crying thief, he sets Withers on the warehousemen. Observe what transpired on the investigation; Herndon was in court, and Judge Busteed—just returned from his trip to Washington, made in the effort to keep Hardy from being turned out of office, and during which visit he had the conversation with Judge Saffold about Wilson's being as "faithful to him as his wife,"—called Herndon up, told him he had seen the affidavits laid before the Government, praised John Hardy highly (!!) and tried to set Herndon on the warehousemen for these 239 bales of the Planters' Factory cotton. Not succeeding in this, observe the course taken with this case, and note that when the second judicial farce was about to be

enacted, the tool, John Hardy, had been removed from office; but another tool, J. Q. Smith, was still District Attorney in the Middle District. Exceptive allegations to the jurisdiction of the court in Mobile over the 239 bales had been filed, on the ground that the same cotton was under seizure in the Middle District. Turn back to the extracts from Herndon's evidence and see how Judge Busteed dealt with and overruled that motion. Then observe the subsequent motion of J. Q. Smith to transfer the case, called by him by a wrong title, and by one that applied to no case on the docket; the ready and miraculous apprehension by the Judge of Smith's reference, and the removal of the case; then the refusal of Herndon's motion to reconsider the order of transfer; then, at a subsequent term, and when J. Q. Smith had gone out of office, the disregard by the Judge of his own order of transfer, declaring that no transfer had been made, and that it was Herndon's business to know it; and finally, the keeping of the case in both courts. (See Bugbee's deposition.) And along with this read the proceedings had on Hardy's application to sell the cotton, and its sale; and see Herndon's evidence, page 117, that no report of sale could be found.

In connection with all this look at the Judge's proceedings on the motion by the claimants to stipulate for the cotton, narrated by Herndon; his diatribe against the Government; the refusal of Worrall to carry out the orders of the Attorney General; the delivery of the telegram of the Attorney General not to sell the cotton; the affidavits of the telegraph men, found in Herndon's deposition, of the delivery to Wilson of the dispatch directing that the cotton must not be sold; the attempt by Worrall (which will be remembered by the committee) to palm off a duplicate dispatch for the original, and to prove, by Judge Cuthbert's endorsement of the time of the delivery of the duplicate, that the original dispatch was delivered after the sale of the cotton. (See page 282.)

Worrall swears that he did not receive the first dispatch. The affidavits of the telegraph men show that it was delivered to Wilson on the 26th of June, 1866. If Worrall tells the truth about not receiving it, how is the conviction to be resisted that Wilson, "faithful to the Judge as his wife," delivered it to *him*, and *he* suppressed this impediment to the sale?

Attention is again invited to the importance to the parties of a removal of this cotton from view, by a sale, standing as it did, until disposed of, as its own witness of the larceny.

Read and study, and compare all these facts, and answer if argument can do justice to this crime, and if Judge Busteed does not stand a convicted criminal?

Observe the fact that this Palmer, to whom Jake Wilson was sent for Withers' money, is the cotton thief spoken of by Withers, and the same man who, when he was playing his part in Mobile, was sought out by Worrall and accepted by Judge Busteed as surety, along with Mr. Andrews, on Worrall's official bond. (See Andrews' testimony, p. 305.)

THE NATCHEZ SALVAGE CASE.

A reference has been made to this case in showing the excessive cost of $10,414 63. Justice demands further comment.

Preliminary to this inquiry, let any lawyer read the drag-net order of seizure, made in vacation, April 21st, 1866, found in R. H. Smith's ninth charge, and proven at page 75 of the evidence. It is a legal curiosity of rare character, and a fit sequence to the order of seizure of 454 bales of cotton in the case of Charles Newberry *vs.* 66 bales of cotton, *et al.*—called the Natchez cases—found in the tenth charge of R. H. Smith, which order is inserted and proven at pages 74 and 75 of the printed evidence.

Under the first order the books and papers were seized by the same Jake Wilson. But Martin became District Attorney; he and the Judge could not co-operate, and their differences resulted in Martin's shooting the Judge.

The change in District Attorneys, and the dissensions of the Judge and Martin, furnish a sufficient solution why these treasury books and papers were not employed to get up a repetition of libel suits similar to those which were instituted in Montgomery, and which were so effectually used and compromised by J. Q. Smith, and of which a picture is presented by the evidence of the gentlemen of the Montgomery Bar, and of Gen. Swayne. If it be said that this supposed purpose is all conjecture, the reply is: What was so remarkable an order issued for? There was *some* purpose. It finds no precedent in judicial proceedings. Jake Wilson seized under it all the books and papers.

The Secretary of the Treasury sought for some time in vain to get these books and papers returned. The ire of the Judge towards him was great on some account. Read Herndon's relation of the Judge's comments on the Secretary's order, on his hearing the motion in the Planters' Factory case. Surely it could not have been entirely generated by the fact that the Secretary had decided, as the law required him to do, the case of the 239 bales, which was lawfully before him, on a jurisdiction of which he was sought to be deprived by the subsequent seizure of the Court. It is evident that the seizure of the 239 bales, under the circumstances, was but preliminary to the drag-net vacation order for general seizure of cotton, books and papers; and that the refusal of the Judge to pay any attention to the decision of the Secretary of the Treasury in the 239 bales case, was a plain precursor of how he intended to treat similar decisions that might be set, in cases that might originate as the fruits of the seizure of the books and papers under the drag-net order.

But, as before said, Worrall ceased to be District Attorney, Martin and the Judge quarreled, and the seizure, viewed alone, would seem to be a mere judicial freak, under which no subsequent proceedings were had. The order of seizure of 454 bales bore, however, its fruits before Worrall retired, and let us see what those

fruits were, and how they were cherished from bloom to ripeness, and from ripeness to enjoyment.

To understand this matter fully, it is necessary to read, carefully, the testimony of Peter Hamilton, to which the attention of the committee is especially invited, as being a clear and intelligent exposition of both the law and the facts which go to substantiate the charge.

The steamer Natchez, a lighter, carrying cotton for the public to various vessels in the Bay of Mobile, and laden for different shippers, sunk in sight of and while approaching the vessels for which her cargo was destined, then lying at anchor in the bay.

Those vessels sent out their several small boats, and saved, in all, about a thousand bales of the cargo, belonging to various shippers. The weather was clear, the water not rough, and the circumstances attending the salvage were similar, though, of course, slight differences attended the cases. The salvors filed their several libels designating by description the lots saved by each.

Peter Hamilton, as proctor, represented the claimants of the cotton. The proper course of procedure could hardly have been mistaken. Every lawyer knows that, first, each claimant should have been allowed to give stipulations to pay such salvage as might be awarded, in order that he might take his damaged property and care for and dispose of it with the least possible expense. The second step should have been a consolidation of the cases to save costs.

Thirdly—The salvors were sea-faring men, mostly sailors, bound to foreign ports, and a speedy adjudication was essential to their rights.

The witnesses were all on the vessels in the Bay. One man from each ship could have come up, and in a short time the whole evidence could have been heard, and the salvage adjudicated and divided with little cost.

The value of the thing saved was of easy ascertainment in the second cotton shipping port in the United States, even without a sale.

If the United States owned any of the cotton saved, its course was to put in its claim, identifying and proving property, and paying salvage as any individual.

All this is too plain to a lawyer to require discussion.

Let us now see what was done. The following remarkable order, before mentioned, found at page 75 of the printed evidence, explains the beginning of what Judge Busteed did:

DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF ALABAMA. } In Admiralty.

Charles C. Newberry *vs.* 66 Bales of Cotton; William C. Piggott *vs.* 27 Bales of Cotton, and others against sundry bales of Cotton, part of the cargo of the lighter steamer Natchez.

In these cases, *which have been consolidated*, a motion is made by the claimants for the delivery to them on stipulation of the property described in their respective claims, and Mr. R. F. Andrews appears in behalf of the United States to oppose said motion. Proof being made to the Court that the property libeled and now in possession of the United States Marshal is in a perishable condition, and that certain of said property, to-wit, 227 bales of cotton, before its shipment on the Natchez, bore the proprietary marks of the United States, and was in good order and sound at the time of said shipment, and that these marks were erased and others substituted; and it being suggested to the Court that identification of said cotton, by the submergement thereof in the waters of the Bay, has been rendered difficult, it is ordered that 454 bales of said cotton, of the average condition of the whole, *without regard to marks*, be retained by the Marshal, and be sold by him under the rules of the Court and the direction of Mr. Andrews, and the proceeds thereof be paid into the registry of the Court, to abide the final decree in the cause.

It is ordered that the remainder of said cotton be delivered to said claimants according to their respective claims, upon their entering into stipulation therefor, with satisfactory security, to be approved by the Clerk of the Court, at the rate of $150 per bale, conditioned as directed by the rules of the Court.

(Signed,) RICHARD BUSTEED,
U. S. District Judge of Alabama.

Before commenting on this order, let us observe that the allusion in it to 227 bales, alleged to have borne the proprietary marks of the United States, were bales which the Treasury Agent had seized from Williams and Garner, and which Tomeny, as Treasury Agent, had put on board the steamship Euterpe, for shipment to New York. Judge John A. Campbell, late Associate Justice of the Supreme Court of the United States, filed a libel in Judge Busteed's Admiralty Court, for Williams and Garner, against said ship, for a marine tort in taking the cotton. The ship made no defence, and Tomeny made none. Judge Busteed heard the case, and decreed the cotton to Williams and Garner, to whom the ship Euterpe then delivered it; and they had shipped it per the Natchez, as a lighter, along with the other cotton, the several shippers not having the slightest connection with each other's shipment. These are the 227 bales specified in the order of Judge Busteed.

He pretended that his decree in favor of Williams and Garner was a fraud upon him; but seeing that he was thus assailing Judge Campbell, who, he says, is friendly to him, he tries to turn the charge of fraud off on Mr. Taylor, Judge Campbell's assistant counsel, who is of the firm of Dargan & Taylor, and who is named by Judge Cuthbert as one of the leading lawyers of Mobile, on the pretence

that Judge Campbell was not in court at the time the decree was taken.*

Under this miserable pretext of fraud on him, (P. Hamilton's testimony, pages 88 and 102,) and without inquiring whether a bale of the cotton saved was of that shipped by Williams and Garner, he concludes to make good the marine loss supposed to have been sustained by the United States, not by seizing the cotton of the United States saved, without respect to the rights of salvors, which would have been bad enough, *but by seizing "454 bales of the average of the whole*, without regard to marks!"

Thus he starts on his foray by taking from others just double the cotton which, by his own pretences, the United States had on board the Natchez. It will be observed that Mr. R. F. Andrews is the proctor for the United States. It will be seen in the sequel how he is employed, *for half*, by Willlams and Garner, to beat the United States in this same case; and what Hudibrastic power he displayed to

"Confute, change hands and still confute."

Observe that the order for the seizure of the 454 bales sets out by saying "in these cases, *which have been consolidated.*" That they should have been consolidated, every lawyer at all familiar with the admiralty practice will at once see. But read the following extract from Peter Hamilton's evidence (pages 87 and 88).

Q. Was there a motion made to consolidate?—A. Yes, sir.

Q. Was it admitted or refused?—A. The consolidation was made, as I understood it, at one time. I moved to consolidate, and I understood that the order was granted. Subsequently, inasmuch as there was no entry of that order made upon the minute book, to the end that it might appear of record, I inserted in the order directing the seizure of the 454 bales, the clause "which had been consolidated." Afterwards these proceedings were conducted by the court, however, as if no consolidation had taken place.

By Mr. ELDRIDGE:

Q. By whose order or direction?—A. I do not know. The Judge afterwards denied that a consolidation of the cases had been granted, and refused, in several instances, to consider them as consolidated.

Q. Was that after the order was made?—A. Yes, sir.

Q. Except to send up one witness from each vessel to state the little

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* The following letter from Mr. Taylor is referred to, showing the falsehood of Judge Busteed's pretence that the decreee mentioned above was obtained by fraud, as well as that of his pretence that Judge Campbell was not in court when it was taken.

Mr. R. H. SMITH:

SIR—I understand that Judge Busteed alleged before the Congressional Committee that the decree in the case of Garner & Williams *vs.* ship Euterpe, was a fraud upon him. This is entirely untrue, and the assertion without the first pretence of justification. Judge Campbell and myself were the only counsel. We were both sitting at the bar when the case was called in regular order, There was no appearance for defendants, and I asked for a decree *pro confesso*. The judge requested me to make it out. Judge Campbell then wrote it, and the judge read it and signed it on the bench.

Respectfully,

JNO. T. TAYLOR.

MOBILE, Nov. 30th, 1869.

incidents affecting his boat's crew, as different from the others, in what did the testimony in behalf of these salvors vary from one plain, simple case?—A. The circumstances connected with the great bulk of the salvage claims were the same. There were cases, however, differing in degree; for instance, there was a steamboat, which was bound for New Orleans, which stopped and made great exertions to save the cotton.

Q. The weather was fair and the sea smooth?—A. Yes, sir; there was little risk of property in saving the cotton.

Q. How much costs were your clients put to in these cases?—A. Upwards of $10,000.

Q. Who were your clients?—The claimants I appeared for were the agents of some six ships.

Q. The Great Western Insurance Company of New York was the principal of your clients?—A. They were heavy underwriters.

Q. The aggregate amount of costs was ten thousand four hundred dollars and odd; is the statement I now show you a detailed statement of the costs?—A. Yes, sir.

Q. Who prepared that statement?—A. I prepared it.

Q. Did you prepare it with great care, or otherwise?—A. I prepared it with great care, and, I believe, with entire accuracy.

[The statement referred to is presented as exhibit A, attached to R. H. Smith's charges.]

By Mr. ELDRIDGE:

Q. I understand you to say that when you first replied to the judge in reference to this cotton you could get no reason for his refusal to do what was desired; did you finally get from him the reasons?—A. The reason assigned by the judge was that he had reason to believe that 227 bales of this cotton had borne the proprietary marks of the United States, and had been surreptitiously taken from the possession of its officers and subjected to this risk without authority of the government, and therefore that the government must be protected against loss.

By Mr. WOODBRIDGE:

Q. You say that in your first interview with the judge you could not understand his reasons; how many interviews did you have with him, and how much time elapsed after the first interview before he stated to you that the government claimed 227 bales of this cotton?—A. I cannot fix the time accurately. I recollect that in one interview the judge said he would like very much to see the bills of lading of these several ships for this cotton; and copies of the bills of lading were furnished to him. That was before I obtained this order. I called upon the judge the next day, and probably two or three times before I got the order. Several days elapsed from the first application until the order was made; I cannot state the number of days.

Q. Was it alleged that the owners of the other cotton had done anything improper?—A. That was precisely the point we made—why should these gentlemen be implicated in an improper transaction, if there was such a transaction, with which they had nothing whatever to do?

Q. Then it was not claimed that the owners of the other cotton had done anything improper, in relation to the cotton?—A. There was no proof that they had. The amount of the allegation was that, upon the statement of facts made by the judge, the government of the United States should be protected.

Q. Who appeared for the government of the United States?—A. Mr. Andrews.

Q. Did he claim that the owners of the other cotton had anything to do with the removal of the 227 bales?—A. I do not know that he did; there was no claim filed, and no such claim at that time set up, as I now

recollect. I do not think it was put upon that ground or upon any other, except that the government of the United States had suffered so much, and therefore the government should be protected to the full extent. There was no pretence, so far as I can recollect, that these gentlemen were cognizant of the shipment of that cotton, or that they had done anything in regard to it.

By Mr. ELDRIDGE:

Q. When the judge finally gave you these reasons to which you last referred, had a claim upon the part of the United States then been filed?—A. No. I remember perfectly well that it was before any writing had been presented on behalf of the United States, because I remarked to the judge, "The United States are making no claim here."

Q. Why did you go to the judge to negotiate about the matter?—A. Because I did not know where else to go. The clerk had refused to give an order upon the marshal to turn over this cotton and receive the stipulation.

As to the conduct of Judge Busteed in not allowing stipulations in admiralty, and especially the reasons for his refusual, to-wit: the desire to increase cost upon the unfortunate shippers, which the rules of admiralty are intended to lessen, read the following from Judge Cuthbert's testimony, pages 71 and 72:

Q. Early in the business of the court arose a number of salvage cases?—A. Yes, sir.

Q. Do you know of propositions being made by the claimants of the property to give bonds, stipulations in admiralty, for the payment of such decrees as might be rendered? And do you know of Judge Busteed's having said anything in relation to his determination respecting those things—respecting the allowing such bonds to be given—and why he refused to do so, if he did refuse?—A. I know by hearsay; I think there was a good deal of discussion in the court—something in relation to bonds being offered. I know that Judge Busteed expressed a determination that wherever property was seized by the operation of his court he would have it sold, so that the officers of the court might receive their fees.

Q. Did he say anything about what had been the custom or practice of the court, and his determination to overturn it?—A. Yes; he said that the attorneys of the court had established a custom of bonding property where there was litigation, and that he would not permit it. I do not recollect the exact words, but something equivalent to that.

Q. To what class of suits did that relate?—A. I think there were salvage cases under consideration at the time such language was used. There were salvage cases, and there were confiscation cases—cases where cotton was seized as having belonged to the Confederate Government, and proceedings were instituted to confiscate it; but I do not recollect with certainty whether the one or the other class of cases were under consideration at this time.

Q. His language applied generally, did it?—A. Yes, sir.

The question presses itself on the mind—what did this conduct mean? And when the reply is given by referring to the $10,414.63 of cost as the result, the question is but half answered. The 454 bales were sold, and bought by some one, *we don't know who!* The *broker* who bought it is known, but not the real purchaser.

The 454 bales were sold, the claimants not being allowed to stipulate for them. Mr. Hamilton moved to set aside the sale, and the

Judge entered upon a scene of browbeating witnesses and insulting the attorney, which certainly displayed his genius, however little it may redound to his credit. Should I attempt to picture the scene, I fear the reader would be incredulous of the truth of the narrative. The whole evidence of Peter Hamilton must be studied to understand it; and even then we shall fail to apprehend Judge Busteed truly, unless we know the elevated character, clear head, and forbearing temper of Mr. Hamilton. The members of the committee who heard him testify will, in some degree, appreciate these remarks.

Attention is invited to the following extracts from Mr. Hamilton's testimony, pages 86 and 100:

Q. What was the treatment these witnesses received from Judge Busteed in their examination?

(The question objected to by Judge Busteed, and allowed by the committee.)

A. In my judgment the treatment these witnesses received was objectionable to the last degree. The manner of the judge to the witnesses was insulting and disbelieving, as if he suspected everything they said to be untrue, and his treatment of them was, I think, in accordance with that suspicion. I cannot describe it more accurately than to say that, in my judgment, it was exceedingly unbecoming. In some instances he almost put replies into the mouths of the witnesses which they had not uttered. I began the examination of the witnesses myself, and put the questions to them. My examination was constantly interrupted by the court. I was not permitted to put very many of the questions which I desired to put. I was continually required to change the terms of my questions, and they were allowed to be put from me only through the judge himself. Objections were continually suggested by the court, and acted upon sometimes without permitting me to make any remarks at all upon them.

Q. What did the testimony tend to prove?—A. The tendency of the testimony was to prove the facts upon which I had made the motion to set aside the sale. In the first place, that the 454 bales of cotton were sold in one lump; and, in the next place, that the cotton was sold in such a manner that there could be no opportunity at all to make any examination of it as to its condition. In the next place that the sale was conducted in so rapid a manner that those who had gone there with a determination to bid considerably above the amount at which the cotton was knocked down, were not permitted to make a bid. And another fact, that, as I conceived, a very incompetent person was appointed to conduct the sale.

Q. Who was that person?—A. Jacob Wilson.

By Mr. WOODBRIDGE:

Q. Are you prepared to say that you think there is a false statement of the testimony?—A. That was my judgment at the time; I am very reluctant to state these things now.

Q. Are you able after this lapse of time to state any particular or improper false statement in the testimony?—A. I will mention this; the current of the testimony undoubtedly showed that the sale was conducted in an exceedingly hasty manner. I think that, with the exception of Mr. Lovett's testimony, the witnesses all agreed in the statement that from three to five minutes was the extent of the time occupied in the bidding; Mr. Lovett said about some 15 minutes. Without trying to say precisely what each witness said, the current of the testimony of all the witnesses established the fact, in my judgment, at least, that an opportu-

nity for an additional bid—after the bid of $105 per bale was made—was not given.

Q. Supposing the statement of the testimony, as is detailed in this opinion, by the judge, had been made by an opposing counsel, would you have deemed it an unfair or a false statement of the testimony?—A. If I had to reply to it I would have shown that it was utterly incorrect.

The result was Hamilton was insulted out of the court; the witnesses were browbeaten; the motion resented as an attack on the Judge's paragons of virtue—John Hardy and Jake Wilson—and the reputable gentlemen, who presumed to give evidence impeaching the sale, were punished with a libelous assault upon their characters by the opinion of the Judge, found at pages 89, 90 and 91 of the record, and which was published, at the time, in the newspapers of the town, and in reference to which Mr. Hamilton testifies, as above, that the statement of the witnesses' evidence made by the Judge was "utterly incorrect."

The conclusion to be drawn from all this is, that the Judge was interested in the purchase of the cotton, as well as in the fee bill of $10,414 68.

Having thus effectually disposed of the proctor and witnesses who got in his way, the Judge, not content with this revenge, turns on Hamilton, who had also dared to move to retax the cost, and calls him to an account for the commercial charges incurred on the remainder of the 1,000 bales of cotton which had, by consent of proctors, been stipulated for, and which went into the hands of commercial agents.

Attention is invited to the pertinent inquiry by Mr. Eldridge, (on page 101,) "What jurisdiction had the Judge over this matter?" and to the truth of Hamilton's reply—"I do not think he had any."

Should we undertake to institute a comparison of the charges on the 454 bales by Judge Busteed, with the commercial charges on the remainder, it would be necessary, in order to form a correct judgment, that we should know whether the cotton seized by the Judge did not embrace the best in the lot, and that which required least expenses for repairs, and then we would ask the question: "What excuse does it furnish the Judge for extortion, that others commit extortions?" And then, how is it that the supposed *lesser* extortions by commercial agents arrested by the Judge's attention—a matter not within his jurisdiction—while the *greater* extortions of John Hardy and Jacob Wilson could not be seen by him when brought specially to his judicial cognizance by the proctor; and still more, why should the mere bringing of these matters to his consideration have so kindled his indignation to red heat?

But let us look at the finale of this matter:

1. Some *unrevealed person* got the cotton at a price far below its value.

2. The officers of the Court got $10,414 63 as expenses on 414 bales.

3. *The United States failed to make out its claim*, and got nothing; but Judge Campbell could not, after more than a year's labor, get the remnant of money coming to Williams and Garner out of the Court; nor could Peter Hamilton, proctor for shippers.

Williams and Garner at last hit upon the happy expedient of offering one-half of it to Andrews, the friend and companion of the Judge, and *the Attorney of Record for the United States who filed the claim on behalf of the Government for the 454 bales.*

The clients neither informed Andrews of the facts on which their rights rested, nor of any witnesses, nor gave any further attention to the case; but behold! in a short time they get their money, (see the evidence of John H. Garner and of Price Williams, *passim*, in the printed record,) and Garner says since the *Committee left Mobile Andrews has sent for his half!*

The charge is that Price Williams bribed the Judge. It should have been, that the Judge, through Andrews, forced Williams and Garner to submit to black mail in order that they might even get *half* justice.

The charge is too harsh on Williams, and it gives the writer pleasure to modify it.

I shall pass, without comment, the charge of bribery in the wharf case. An appeal from the Judge's decision is now pending in the Supreme Court of the United States, and to that forum the correctness of the decree is referred. If it be affirmed, Judge Busteed will, at least, be partially able to set up the plea of Lord Bacon's biographer, that, though he received money for his judgments, they were not reversed. If the decree shall be reversed, the wrong done will be righted; and, happily for justice, and for the honor and dignity of the United States, the facts of the case are not needed for the exposure of Judge Busteed's wickedness.

The twelfth charge, as to all its statements of facts, is sufficiently made out by the evidence of Peter Hamilton. The outrage, by delay, on the sailors, who were entitled to their pittances of salvage, is glaring; the absence of all reasonable cause for these delays is apparent; standing alone, the case presents an instance of an Admiralty Judge oblivious to all sense of the duty of making a speedy decision. Taken in connection with the general course of the Judge's conduct, we may at least exclaim:

"*Quidquid id est, timeo Danaos, et dona ferentes!*"

The heat of this prosecution may have aided the salvors in getting, at the eleventh hour, a decree free from flagrant injustice, just as the exhibition of the charges came in good time to prevent the Judge from accepting J. O. D. Smith's order for $500, given on Senator Spencer's promised solicitation, but which Mr. Smith considered as clear, pure black mail forced out of him by Judge Busteed.

Before proceeding to the discussion of the thirteenth charge, based on the trial and conviction of Gustavus Horton, let us advert

to the character of Judge Busteed's associates, and see if they can relieve him. If *they* cannot, his last prop is gone.

Who are Rufus Andrews, Lawrence Worrall, J. Q. Smith, N. W. Trimble, John Hardy, and Jacob Wilson? The reader can already answer the question as to who each is except Trimble, and it is, perhaps, enough to say he is the law pupil of J. Q. Smith, and the clerk of Judge Busteed.

Rufus Andrews has already been placed before the committee in connection with the transactions in the Planters' Factory case, and his advent to Mobile. At page 73 of the record "Judge Busteed admitted the relations between Rufus Andrews, Lawrence Worrall and himself were as intimate as the relations of any three men could be; that they were most intimate and friendly in their character."

See, just before this extract, the evidence of Judge Cuthbert, confirmatory of what has been said in another part of this paper as to Andrews' place of business, &c.

At pages 73 and 74 Judge Cuthbert proves that Andrews obtained a large practice in important cases in the court; that he and Worrall were always associated; that he was never engaged in any elaborate argment. The witness says, "there were some passing arguments that he would engage in, but I do not recollect anything that indicated an elaborate preparation." Again, "I cannot recollect a single case that was decided adversely to him. I believe the cases in which he appeared were all decided in his favor. I do not recollect that the thing underwent any careful consideration by me; I know that, as a general thing, he was very successful with the Court."

Here we have an unknown man, evidently of small legal capacity, who comes with the Judge, lives with him, frequents the court, and is located transiently in the third story of the Custom-house, but without office, and without books; he goes, as he came, with the Judge—yet this man immediately gets a large business, and is always successful? Does the case require comment? (See p. 73.)

In the wharf case he does not even put his name to the bill as one of the solicitors; he takes no part in the trial, yet is paid $10,000. (See Alphonse Hurtel's evidence.) In this case the complainants had Judge Campbell, the two Hamiltons, Dargan & Taylor, and George N. Stewart—all of whom are known to be distinguished and able lawyers—and Andrews is retained to assist these gentlemen, and gets $10,000, and his is the first fee paid!

Lawrence Worrall was the former law partner of the Judge, in New York. It is not contended that he is a man capable of managing a cause. At first he is clerk, commissioner of bail and affidavits, and district attorney, and general practitioner with Andrews, with whom he is always associated; then register in bankruptcy. He is presented in several parts of the foregoing discussion. He is found consorting with Spencer to have presents made to the Judge, who, he says, is rich. (See his evidence as to the

Judge's wealth.) See how he exacts from creditors in bankruptcy five dollars for a proof of debt, the legal fee for which is 25 cents by 30th general orders in bankruptcy established by the Supreme Court; (see Alphonse Hurtel and T. A. Hamilton's evidence,) and see Worrall's own miserable subterfuge for the act given in his own evidence, and see his attempt in the Davis, Hall & Co., case in bankruptcy to cozen the creditors out of their right to elect an assignee, narrated by Alphonse Hurtel; observe, too, that he tells Judge Cuthbert that he and Andrews have to apply their money as a common fund for the support of the Judge's family. (Cuthbert's deposition.) This, of course, he denies. No other alternative was left him.

Enough has been said of Jake Wilson. For portraits of John Hardy, and J. Q. Smith, see the evidence of almost every witness residing in Montgomery. Gen. Swayne thus truly describes them:

By Mr. ELDRIDGE:

Q. What charges did you make to Judge Busteed, or what charges did you speak to him about, in reference to James Q. Smith?—A. Principally his interference with bureau matters; but his general conduct was the subject of these conversations.

Q. What general conduct?—give us something specific.—A. Well, I think his compromising of cotton cases was made mention of between us. Whether I ever stated much to the judge about the collection of costs I do not know. That was a matter understood, but it was done by order of the court.

Q. What was said by you to the judge about the compromising of these cotton cases?—A. That I cannot tell.

Q. What about the costs?—A. I could not say specifically what it was.

Q. You say the judge knew your opinion of James Q. Smith?—A. Yes, sir.

Q. What opinion of yours did he know with reference to him?—A. He knew that I considered Smith a scoundrel.

Q. In what regard?—A. Both as dishonest and ferocious. I recollect on this ride I took with the judge, mention was made of a letter of Mr. James Q. Smith, addressed, I think, to the assessor of internal revenue, in which language was used exceedingly vulgar and profane, and I spoke to the judge of the character of a man who could possibly write such a letter.

Q. Why did you talk to the judge about this matter?—A. Mr. Smith was district attorney, and the judge was judge of the district court.

Q. What was there batween them that led you to warn him against Smith?—A. Simply this: that I considered it necessary to the people of Alabama that the district attorney and the marshal should be got rid of; I thought them a curse to the people of the State. I didn't think that the judge was a party to their conduct, and I thought if the judge could be roused to appreciate it that he would desire their removal instead of their retention; and by their removal and retention I did not mean simply their removal or retention in office, but that he would want them away from his court as principal actors in it.

Q. Did you know of any intimacy between the judge and the district attorney other than that which would necessarliy result from their official relations?—A. How far an intimacy from their official relations would go, I cannot say. But the judge lived in Montgomery, part of the time, in Mr. Smith's rooms, and there was, to all appearance, kindly

personal relations between them; but I should not have set that fact down as improper.

Q. That would not necessarily result from official relations?—A. It might or it might not, according to the personal like or dislike of the parties. It was not inconsistent with honesty. The judge spoke to me repeatedly, and with a great deal of impatience, of Mr. Smith's ignorance, and used to complain to me that he was forced to be district attorney and prosecutor too, because of Smith's ignorance.

By Mr. CHURCHILL:

Q. Was official corruption one of the charges you made against Smith in your conversation with the judge?—A. Yes, sir, certainly.

Q. What did the judge say in regard to that?—A. I do not know that he ever said anything, so much as that he never admitted it.

Q. Did he defend Smith in that conversation you had with him?—A. I do not think he did.

Q. So far as you know, was there anything in their intercourse at all except what is usual between persons holding the official relations which they held with each other?—A. Only this, that the conduct, or rather the course, of Mr. Smith in court, the facilities which he enjoyed, and the conduct of the judge towards him in court, I understood to be such as could be accounted for on no other principle than that there was a corrupt alliance between them; it was that which finally determined me to speak to him as I did.

Q. How long was it after the subject of Smith's official corruption was talked about between yourself and the judge that Mr. Smith was removed from the office of district attorney?—A. I should think three or four months; I could not say precisely.

Q. Did the judge oppose that removal?—A. My understanding was that he did, strenuously, after this conversation.

By Mr. ELDRIDGE:

Q. You emphasized the expression that you did not think the judge was a party to any of their corruptions?—A. I ought to have said that I did not know it. I made up my mind finally, or rather came to the conclusion, that the judge must be mixed up in it; at any rate, the inference was so strong in my mind that I felt I did not want anything more to do with him; but his approaches to me afterwards for personal and friendly relations were of such a nature that I said to myself and said to my friends: "Now, I don't know that this man is corrupt, and if he will from this time carry himself straight, I think we can save him, and if we can we had better do it."

Q. Before or after the removal of Smith?—A. Months after the removal of Smith; that was said within a few weeks prior to the time I wrote to him as I did.

Q. Have you changed those opinions now—the opinions which you had that he was not mixed up with it?—A. I have; I am now of the opinion that I was when I wrote him that letter.

By Mr. CHURCHILL:

Q. Do you remember any other person whose conduct was particularly mentioned between you and the judge except James Q. Smith?—A. Oh, yes—Hardy; the Judge complained to me of my having had Hardy removed, which I had.

Q. Give the conversation that occurred between you and the judge on this occasion in relation to this subject.—A. He simply complained; I told him how necessary I had thought it to be, and something was said in that connection. He had a good deal to say of the amount of work that I would do in such a case if I went at it. He simply

spoke of me; he said he had never met or known a man who if he undertook a thing of that kind would do so much patient labor in putting it through. I said to him, rather significantly, that that was only a preliminary skirmish.

By Mr. ELDRIDGE:

Q. What reasons did he allege, or why did he complain?—A. He said, "You have had my marshal removed," as if he had not wanted it done.

By Mr. CHURCHILL:

Q. What reasons did you give why he ought to be removed?—A: His rapacity. I probably spoke of him as the most rapacious person I had ever known in his official capacity.

Q. What did he say in answer to that charge of yours against Hardy!—A. I do not know. I cannot say anything definite was said. All these things were merely remarks interspersed in conversation.

Read the accounts scattered all through the proofs of the rapacity and plundering of Smith and Hardy, and say if such can be tolerated in a civilized land.

Smith was the Judge's intimate companion, with whom he stayed in Montgomery, and in whose room he slept.

When efforts were made, and successfully, to turn Hardy out of office, see how the Judge posts off in hot haste to Washington to save him, and how he lamented to Gen. Swayne his removal, and tells Judge Saffold how dear Jake Wilson was to him. And after his return, and the case is up in which Hardy had stolen the Withers' cotton, observe how he turns the investigation from Hardy and assures Herndon of John Hardy's honesty.

N. W. Trimble, the successor of Worrall in the clerkship, came from J. Q. Smith's office, *where he had been instructed*, ("at the feet of Gamaliel!") and goes into office by taking an oath, (a sort of oath of office specially gotten up for him by Judge Busteed,) and which, even as worded, was false. See Trimble's admission and account of this fact at pages 388 and 389 of the printed record. Its perusal is invited.

These are Judge Busteed's companions and friends. These are the men who controlled in his Court the administration of *justice!*

These are the witnesses he relies on to refute, by negative evidence mainly, the positive evidence against him of honorable men and of the records.

I shall not pause to further analyze or sift their testimony. Let any man read John Hardy's, and answer if falsehood and evasion do not appear in every line. I call attention to the *manner*, too, with which he testified. The gentlemen who heard him can tell that.

Read Andrews' testimony about the Williams and Garner matter, and note how entirely incapable he is of even describing the case. Yet Williams and Garner got the money *by his professional aid.* Mark how Andrews even gives out the idea that he had no fee in the Williams and Garner matter; nevertheless, *since the taking of evidence has closed, he has sent for it!* So says John H. Garner. The fact can be easily ascertained.

But it may be asked, what does this denunciation of so many men mean? The answer is, that instead of "whiskey rings," we in Alabama have a *Court-house Ring*, by which justice is overthrown and the Government brought into odium. The difficulty of resisting and overthrowing so extensive and formidable a combination was anticipated and is fully appreciated.

The force of the hue and cry of "rebel persecution" has all been taken into account. Are Gen. Swayne, Gustavus Horton and Governor Smith rebels? Judge Busteed, while he was covertly playing Democrat, (as is described by Horton and Gen. Swayne,) was shot by the District Attorney, a Republican of the straitest sect. But Martin was a native of the South, and Judge Busteed talks loudly about the "rebel bullet" he bears in his body. He knows full well that he was shot in a difficulty that had not the slightest relation to politics; that the bullet he bears is the fruit of his own hectoring and insulting course towards the District Attorney, because he dared to supersede Lawrence Worrall.

What impediment Judge Busteed offered to the progress of secession the history of New York politics will tell. The writer of this review endeavored through all his manhood to avert that awful calamity. It came in spite of his more than twenty years opposition, and he has no excuse to offer for standing by his native and adopted States in the hours of their trouble. He begs pardon for this digression from the evidence. Truth seems to require it.

The foregoing review leaves no necessity for summing up or recapitulating the charges. It is submitted that the first, second, third, fourth, seventh, eighth, ninth, tenth, eleventh and seventeenth charges of Robert H. Smith, and the charges of Henry C. Semple, respecting the Spencer and Burke and Day bribes, and the Morris money of $5,000, have been shown to be proven.

Turning from the peculations of Judge Busteed and the officers of his Court, let us investigate the case of

THE CRIMINAL PROSECUTION AND CONVICTION OF GUSTAVUS HORTON.

Gustavus Horton is an old and respectable citizen, who had been a merchant of Mobile of thirty years' standing; was openly through the war an Union man; and was imprisoned by the Confederates for his Union course. He belonged to the Republican party, advocated the reconstruction measures, and was subjected to great odium in the community for his sentiments; was a member of the State Constitutional Convention, and presided at the meeting at Mobile at which Judge Kelly, of Pennsylvania, spoke, and where the riot, familiarly known as the Kelly riot, occurred.

An opposition meeting was held, after the Kelly meeting, and at this Judge Busteed presided and made a speech. His political course in this, and other respects, incurred the displeasure of the Republican party in Alabama, and particularly of the colored people. Mr. Horton, among others of the Republican party, censured Judge Busteed's political action.

John Hardy, the late Marshal, had started a Republican paper in Montgomery, with the name of Gen. Grant for President, and that of Judge Richard Busteed for Vice-President, at its head. About May, before Horton was indicted, he had written a letter to John Hardy, which was published in the latter's paper, stating that Hardy had made a mistake in putting up the Judge's name, for he had lost the confidence of the Republican party in Mobile.

A public demand was made in the paper on Horton to retract, of which he took no notice, and the demand was reiterated several times.

(See Horton's and Gen. Swayne's testimony at large.)

Mr. Horton was Mayor of Mobile, by military appointment. The charge of Judge Busteed to the jury, found from page 76 to 81, is referred to as proof that Judge Busteed knew and availed himself of the odium that Horton had incurred from the community, by the fact that he had, through military appointment, superseded the Mayor who had been elected by the people.

The last charge, of a political character, to which Mr. Horton could have been amenable, was that of discriminating against a colored person on account of his race or color, or previous condition; and yet this is what he was indicted for.

At a Republican Convention, in June, 1867, one of Judge Busteed's friends made application that he should be introduced to the floor of the Convention. Some of the delegates from Mobile objected, on the ground that he was not a Republican, stating that Mr. Horton had written a letter to Hardy (the letter before mentioned) impugning Busteed's republicanism, and that Hardy had published it, and had called on Horton to explain, and that the latter refused to make any explanation in relation to it. Judge Busteed was excluded from the Convention.

General Swayne, of the United States Army, late military commander of Alabama, thus speaks of Mr. Horton: "I might also say that my indignation was strongly moved by the Judge's imprisonment of the Mayor of Mobile, Mr. Horton, who was a warm personal friend of mine, and whom I believed, and still believe, to be an entirely loyal and honest man." (See evidence, p. 157.)

At the following fall term of the Court Horton was indicted and convicted. (See Semple's evidence, p. 350.)

Observe now, from the testimony of Healy, the Marshal, (p. 363,) that juries were not drawn in Judge Busteed's Court, though required by act of Congress of July 20, 1840. (5 statute at large, 394.) The law of the State to which this statute refers, and which it requires to be followed, is found in sections 4,062 and 4,063 of the revised Code of Alabama of 1867, and provides for drawing the jury biennially, from a list of householders and freeholders; and the English declaration of rights declares "That juries ought to be duly empaneled and returned." (3 Hallam's Const. History of England, p. 103, seventh edition, by Little, Brown & Co.)

But mark Healy's evidence! that *he* had been in the habit of se-

lecting the jurors, (page 363,) *but at this term the list of jurors was made out and handed him by the clerk.* (Page 362.)

We start then with the fact that the jury was packed by Judge Busteed's clerk, and that the mode of designating the jurors for the term was exceptional. By this it is not intended to convey the idea that the men composing the jury were corrupt, but it is apparent, from the evidence, that Mr. Horton was, at best, odious in the community for his political sentiments and action, and it is evident how powerful an engine Judge Busteed had in his hands and was using, when *his clerk* was fixing up a jury specially for that term.

Besides, Judge Cuthbert's evidence (p. 84) shows how absolutely the Judge controlled the juries in his court, both as to the law and the facts, and by reference to the Judge's charge in Horton's case, we see how little the jury was allowed to do. (p. 76 to 81.)

A miserable, drunken, disorderly negro, offensive to decency, and of turbulent character, was constantly on the chief streets of the city, in fantastic garb, with a newspaper on his back and a fool's cap on his head, labelled "Bromberg's hat," in derision of the received fact that Mr. Bromberg had lost his hat when on the stand with Judge Kelly. This man was daily attracting and exciting the populace by crying out, "Bromberg's hat," and much more of like stuff, in a loud, discordant voice. Horton, after fining him without effect, ordered him sent out of the city as a dangerous and suspicious character—the ordinances of the city not only authorizing this course, but it having long been practiced by the Mayors of the city. Many white men had been sent out by Horton's predecessor, and by Horton. The police took the negro on a steamboat to New Orleans, but he returned on the return trip of the boat, and was again on the street on Sunday morning, followed by a crowd, repeating his conduct. Horton sent the man to Montgomery to General Swayne, who was then military commander of Alabama, with his headquarters at that city. For this Horton was indicted under the civil rights bill, and was charged with discriminating against the negro *on account of his race, color or previous condition.* See the charge of Judge Busteed to the Grand Jury, inviting the indictment. (Evidence, p. 267.) His defence was that he did not so discriminate, and the line of it was to make good this fact. Judge Busteed refused to allow evidence tending to prove it. The trial lasted five days, creating much interest, and attracting a great crowd. Horton was convicted and fined. It would be almost impossible to give a picture of this trial without copying the evidence.

The whole scheme was an attempt not only to gain revenge, but to strike and degrade Horton, politically and personally, for having opposed the Judge's political aspirations.

There was no evidence whatever of Horton's guilt. There was no proof tending to show that he had been in the slightest degree influenced by the race, color, or previous condition of the man punished.

Horton was not allowed to offer any testimony to the very point

of defence. His counsel, Mr. Moulton, was bullied down (notwithstanding what he himself thought). No softer word can express the idea. He was so bullied that, for at least two days, he sat dumb. He was defending an innocent man, and one that he felt and knew to be innocent. (See on this point Moulton's evidence.) He was not only a dumb spectator for two days, but could not argue his case before the jury, and did not attempt it.

Read the accounts of this trial given in the testimony of Judge Cuthbert (evidence, pages 76 to 84); of Peter Hamilton (page 94), and of Thos. A. Hamilton (p. 259); of Gustavus Horton, generally, and of Wm. D. Dunn—all in the printed evidence—and of Percy Walker, taken in Mobile.

Turn to the charge of the court, which, from beginning to end, assumes the facts, making every one of them a predicate of guilt. Read the account of the manner in which the Judge used the police docket, narrated by Horton, and the portion of his charge relating to that subject. See how his records speak falsely respecting the admission of Dimon's testimony. (Cuthbert, p. 69.)

Look at him in his official chamber, just after he had procured a conviction, and mark his ferocious glee. Observe his friends, alarmed at the extent to which he is disposed to wreak his vengeance, sending into the bar for Wm. D. Dunn, Esq., to counsel moderation. Read the following from Dunn's evidence, page 187:

By Mr. SMITH:

Q. Were you present when Gustavus Horton was tried on an indictment for discriminating against Charles Archie Johnson on account of his color?—A. I do not know that I was in court during the whole trial. I was there for some time.

Q. Give to the committee, as near as you can, all that transpired on the trial of Gustavus Horton on that indictment.—A. I cannot recall the language, I can only recall impressions left on my mind by witnessing the exhibition which took place in the court. The manner of the Judge on that occasion was overbearing towards the counsel for Mr. Horton, Mr. Charles Moulton. There was a constant interruption on the part of the court to suppress the interrogatories propounded by Mr. Moulton in behalf of Mr. Horton.

Q. What was the tendency of the interrogatories?—A. I cannot tell what the interrogatories were. They were such interrogatories as counsel conducting the defence, under the state of facts existing, would present. I do not recollect what language was used, or exactly the character of the inquiries. I do recollect the character of some of them. Some of them were tending to show that this action on the part of Horton was only following the precedents of preceding Mayors. I remember that. That evidence was excluded.

Q. What effect did the bearing of the judge have upon Moulton?—A. Well, sir, he wilted; that is about as expressive a phrase as I know of. It was about as complete a breaking down of counsel as any that I ever witnessed.

By Mr. CHURCHILL:

Q. What was the manner of the counsel toward the court on that occasion?—A. It is difficult to conceive of anything more deferential than it was.

Q. Was there anything in the conduct of counsel or of witnesses to occasion other than courteous treatment from the Bench?—A. Nothing that I witnessed.

By Mr. ELDRIDGE:

Q. Nor of the defendant?—A. The defendant was perfectly silent; the defendant did make a speech afterwards, when called upon by the judge; but that was at a subsequent period of the trial, after the conviction.

Q. There was nothing in his conduct or bearing that should induce this conduct on the part of the judge?—A. Nothing in the world.

By Mr. SMITH:

Q. Give some idea of the look and manner, &c., of the judge.—A. I cannot describe that exactly, except to say that it was overbearing and dictatorial.

Q. State who catechised the witnesses mainly in relation to the case.—A. Mr. Moulton was not allowed to conduct the examination of his witnesses hardly at all. I do not recollect the witnesses for the prosecution. The conduct of the court toward the witnesses for the prosecution has no resting place in my memory at all.

By Mr. ELDRIDGE:

Q. Who was trying the case on the part of the government?—A. I think it was Mr. George N. Stewart.

Q. Was he district attorney at that time?—A. No, sir; Mr. Martin was the district attorney.

By Mr. SMITH:

Q. State whether you yourself made any remonstrance to the judge in relation to the sentence that he should pronounce on Mr. Horton, and what the judge replied, if anything.—A. The judge sent for me to his room after the conviction. There were some gentlemen in his room when I got there. Whether any conversation occurred between the judge and myself in the presence of those gentlemen I do not recollect. The purport of the judge's inquiry of me was what I thought should be done with Horton. I cannot repeat the language in reply, but I can state the impression I endeavored to convey. I said to him in effect that it was a small affair; that the thing had been grossly magnified, in my judgment; that Horton was an old man, and with small means, and that I thought a very small fine would be a sufficient punishment. I do not recollect any response which the judge made at that time. He said he had an engagement to dine. The other gentlemen had left the room, and we walked out and walked down the stairs. As we were on the stairway he repeated the inquiry to me, what I thought should be the sentence of Horton, and I repeated what I had said before. The judge replied in a manner which made a distinct impression on my mind: "By God," he said, "you may eat me if I do not do more than that."

Q. Do you know whether his feeling was one of animosity towards Horton?—A. No; I never had any conversation with the judge about Horton except on that occasion.

Q. Do you know whether other gentlemen remonstrated with him against doing what he was disposed to do in the way of sentence?—A. Not in my presence; I have only heard of it from other gentlemen.

And again Dunn testifies at pages 193, 194:

By Mr. SMITH:

Q. State whether Judge Busteed made any expression or demonstration as to Horton's conviction?—A. I answer that in the affirmative.

Q. What was the expression or demonstration?—A. There was an ebullition of fine spirits, decided gratification, and remarks of a congratulatory character which I cannot repeat.

By Mr. ELDRIDGE:

Q. Was that before or after the wine was taken?—A. It was concurrently, I suppose, for I was a very short time in the room.

By Mr. CHURCHILL:

Q. Was it immediately after the verdict?—A. I cannot say; I think it was.

Q. Were you in court when the verdict was given?—A. I think I was; but I am not so clear on that subject. This interview was, I think, immediately after the return of the verdict, and before the sentence. I cannot repeat the language, but it was simply an expression of gratification at the result of the trial.

By Mr. ELDRIDGE:

Q. How did Judge Busteed manifest this ebullition of satisfaction and joy?—A. By the remarks which he made and the good humor he manifested.

Q. What did he say?—A. I cannot repeat his language.

Q. Tell us what he said in substance.—A. The idea was that a great success had been achieved.

Q. Did he express himself in words to that effect?—A. I think he did.

By Mr. CHURCHILL:

Q. By whom had this success been achieved.—A. By the prosecution.

Q. Did he convey to your mind that he felt it was a personal success on his part.—A. Exactly.

By Mr. ELDRIDGE:

Q. Can you tell us anything that he said from which you drew that conclusion—that he had a personal success?—A. My examination-in-chief will show that, I think. He conferred with me about the sentence which should be pronounced upon Horton, and in terms which indicated that he supposed I was sympathizing with the prosecution. I was not sympathizing with the prosecution against Horton. I felt great sympathy for Horton. No remonstrance on my part would have been necessary but for the manifestation of feeling which was made on the part of the judge, it seems to me.

Q. Do you recollect what the judge was doing when you went into his room?—A. I remember that it was a hilarious meeting. There was a good deal of hilarity. Mr. Stewart, who conducted the prosecution, was present, and was evidently very much gratified himself at the success of the prosecution.

Q. Had wine been drank before you came in?—A. I cannot say. There was not time to have drank any wine to have produced any effect on them.

Q. Had the judge just left the bench?—A. He had just left it.

Q. Did you see any indications of their having drank wine when you first got to the judge's room?—A. I think there were probably glasses and a bottle on the sideboard.

Q. What was the wine that was drank, champagne or still wine?—A. I do not recollect.

By Judge BUSTEED:

Q. Do you know what the sentence of the court on Horton was?—A. I do.

Q. What was it?—A. $250 fine.

Q. Do you know the extent of sentence which the judge could have imposed?—A. I believe Horton could have been sent to the penitentiary.

Q. For two years?—A. I do not know; I never studied the act of Congress on the subject.

See how he is forced down to a mere fine by the very rebound his ferocity had given to the public mind in Horton's favor.

A study of Judge Busteed's conduct in this case almost persuades us that he sat to Macauley for his picture of Jeffreys.

The most depraved of men do not thus scheme and contrive and plot the conviction of innocence without a motive. Jeffreys was above that. Judge Busteed was above that. There *was* a motive. There was but one. That one was *revenge.*

Revenge because Horton had exposed the demagogue and blasted his political hopes. The white men of the Republican party (save those like John Hardy) despised him, and the colored men, as is shown by Gen. Swayne, refused to be his dupes. Horton exposed him, and thus was "the engineer hoisted with his own petard."

Here the review of the evidence on the charges preferred might end. But beyond this, there is cause for impeachment brought out by his own evidence, and to that attention is now directed. It is

THAT JUDGE BUSTEED RESIDES IN THE STATE OF NEW YORK.

Mr. Worrall, the Judge's friend and *factotum*, (at page 289,) testifies that the Judge sold his house on Madison Avenue for about $40,000, and that "he owns a fine place at Jamaica," and that he does not consider his circumstances poor by any means; yet the Judge, as we have seen, accepted in 1867 money from his registers in bankruptcy, *tendered on the score of his poverty*, and to assist him in defraying the expenses attending his sickness, *his family having come on from New York.* (See Spencer's evidence, p. 40.)

N. W. Trimble, the Clerk of the United States Court at Mobile, appointed by Judge Busteed, says (page 388) he supposes the Judge lives in Mobile. "*When in Alabama*, he is at Mobile, Montgomery, and at Huntsville. That he thinks his family lives at Jamaica, Long Island."

Judge Cuthbert (page 72) speaks of Jake Wilson's relations to the Judge as those of a menial servant; testifies that a part of the time the Judge's family was with him, and in this connection he speaks of his keeping house; and again he speaks of when the Judge was living (in the past) in Mobile with his family.

Rufus Andrews came to Mobile with Judge Busteed in the fall of 1865, lived in his family in Mobile, and left in April or May, about the time Judge Busteed went to New York. (p. 305.) At page 306, Andrews, referring to the first business in which he was engaged in Mobile in 1865, says he lived at the house Judge Busteed occupied, (Madame LeVert's house,) and that soon after Judge Busteed (misprinted Judge McKinsley) broke up housekeeping and left. Several witnesses speak of Judge Busteed's visits to Alabama, and his departure for New York.

In the fall of 1865 he brought out his family from New York, occupied up to May, 1866, Madame LeVert's house in Mobile, and has since remained in New York, visiting Alabama to hold court, and returning to his home; and the only occasion since May, 1866, of his family's being in Mobile, was their visit to him in 1867, after Martin, the district attorney, shot him, and when he was sick from his wounds.

Not only does Judge Busteed prove, by letters written to him and given in evidence by him, that he lives—and lives luxuriously—at Jamaica, in New York, but the fact is fully established by other proofs.

Witness Keffer, in reply to a question by Mr. Churchill, says in substance, (see foot of page 197 and top of 198,) that when register in bankruptcy in Alabama, under Judge Busteed, he went to Long Island to see him, and "waited at his house several days for that purpose. But he was in Boston, and they expected him daily, but he did not return within the time I could stay there."

At pages 201 and 202, will be found two letters from Keffer to Judge Busteed, introduced in evidence by the latter, one from Montgomery, of July 22, 1867, saying, "Perhaps next summer I can afford to go North, and if so, I would be delighted to see your home at Jamaica." (Jamaica is on Long Island.)

The other from New York, October 20, 1867, describes the Judge's "lovely house" on Long Island, his "treasures," his splendid apartments, with landscape views, splendid paintings, etc., etc., and wonders how, with all this, he could "make up his mind to come to poor God-forsaken Alabama *and hold court* (not reside) among rebel lawyers."

At pages 38 and 39 Judge Busteed takes pains to prove by Judge Chilton, three times, that he (Chilton) was the the guest of Busteed at the latter's house on Long Island, in 1868, and that Busteed and his wife and children were there, and that Chilton had before entertained Busteed at Chilton's house in Montgomery, where the latter and his wife and children were.

Mr. Manning, (p. 239,) speaking of Jacob Wilson, says he was the same man who "accompanied the Judge, I believe, as servant, on all *his visits* to Mobile except one, I think; and whom I saw standing at his office door in New York, and who invited me into the Judge's office there."

Judge Busteed has been in the actual exercise of his judicial functions in Alabama since the fall of 1865. (p. 69.) The statute of 18th December, 1812, sec. 1, (2 statutes at large, p. 788,) makes it "a high misdemeanor" for him to reside out of the State of Alabama. The *statute* imposes no penalty for its infraction, but the *Constitution of the United States* does—and that penalty is removal from office by impeachment. The argument of Luther Martin, in defence of Judge Chase, upon the meaning of the clause in the Constitution alluded to, leaves no question but the word "high" was added to the word "misdemeanor" in the statute, that no doubt might

exist but that a Judge should be impeached for this "high misdemeanor;" and the omission of Congress to affix a penalty to the offence, renders it certain that the exact punishment intended was removal from office by impeachment.

For non-residence alone, then, the Judge is liable to impeachment, and should be impeached.

And now, having shown that he has not only befouled the ermine he wears, but has been guilty of high crimes and misdemeanors, let us dismiss the subject with some general views of

WHAT, BY THE CONSTITUTION, IS AN IMPEACHABLE OFFENCE.

Or rather let us inquire if he can escape some of his crimes be cause, perchance, the statutes of the United States shall not have supposed them capable of commission.

Are causes of impeachment confined to a violation of the criminal statutes of the United States, or is there a common law and a history to which the expression "during good behavior," in our constitution, refers? That there are offences simply recognized by the laws of the United States, see 1. Brightley's Digest, page 204, section 17.

If we are bounded alone by criminal statutes, then the inestimable common law principles of *magna carta*—that justice shall not be *sold*, nor *delayed*, nor *denied*—and the history of judicial corruption in England, exhibiting itself in packing juries, in browbeating witnesses and attorneys, in forcing verdicts "by order of the court," (as did Judge Busteed in the case testified to by Judge Cuthbert)—then this history, with its corrections in the revolution of 1688, and these principles of *magna carta*, are a barren waste to the American people in the courts of the United States! In these courts, and *in them alone*, judicial corruption may wallow in its ancient mire and filth, save so far as forbidden by the few criminal statutes of the United States.

The act of settlement of the crown upon William and Mary pointed directly to the judicial corruptions I have named, flowing from the dependence of the Judges on the Crown; and the act of 13 William III., chap. 2, declared that the judicial term should be "*quamdiu bene se gesserint.*" Our constitution engrafts this by the equivalent "during good behavior," and as distinctly refers to and adopts *magna carta* and the act of 1688, and of 13 William, and adopts them in the light of history, as if express words of adoption were employed. The tenure of the Judge's office then is "during good behavior," as meant by English history. The words are historical. When, in the sense referred to, the Judge ceases to observe "good behavior," the *tenure of his office* has expired. The Constitution is the statute which so declares. The remedy is impeachment.

The impeachment of a judge is an inquiry of office to determine whether the tenure of his office, "good behavior," has expired, and it is inadmissible so to construe the language of the *remedy* as to make it paramount to the language creating the *tenure*.

To the student of the Constitution of Great Britian and of the United States, it is evident that the words "*quamdiu bene se gesserint*," or "during good behavior," are historical, and are employed in our Constitution with reference to their history, and in their historical sense; and that when our constitutional provision for impeachment for "high crimes and misdemeanors" comes to be applied to the judicial office, we must recur to the history of that office.

The tenure arose from, and to remedy, the subserviency of the judges to the crown; which subserviency caused them, among other misdemeanors, to be insolent, overbearing and tyrannical, to the bar and the suitors—Jeffreys being but an extreme instance of such conduct very generally practiced. The offence must be a high crime or misdemeanor; but it is a misdemeanor in a judge, and a high one, to sell, delay or deny justice—a crime as old as history itself—a crime against the venerable charter of English liberty declaring an English birthright already possessed.

Suppose Judge Busteed, instead of George the Third, had protected by a mock trial a soldier from punishment for murders which he had committed on the inhabitants of the United States. *This outrage is denounced in the Declaration of Independence.* Would the offence not be impeachable because it finds no place in the criminal statutes of the United States?

I submit that the doctrine that no offence by a judge is impeachable unless it is found in a criminal statute of the United States, will not for a moment bear investigation, and would, if established, sap the foundation of all securities for the pure administration of justice in the National courts.

The foregoing remarks are not intended to apply to other than judicial offices. The broad distinction between a judicial office, whose tenure is "during good behavior," and other offices of a different character and whose tenures are for fixed time, will readily occur to the Committee. As to other than judicial offices I enter upon no examination or discussion.

I now leave Judge Busteed to the judgment of those guardians of judicial purity appointed by the Constitution; and that justice which he has so outraged, to their helping hands.

The testimony upon the charges made against Judge Busteed by H. C. Semple, Esq., has been but briefly reviewed in the foregoing argument. Mr. Semple will do justice to that.

NOTE.—As the last pages of the foregoing review were passing through the press, my attention was called to the published proceedings, *purporting* to be those of the bar of the Northern District of Alabama, held at Huntsville, in which Judge Busteed is eulogized for the "dignity, courtesy, impartiality and ability with which he has dispatched the *business of this term*," with assurance that

such conduct *at this term* has won the respect and esteem of the Bar, and entitled the Judge and the court over which he presides to the public confidence.

There is no doubt but this cheap certificate, *which so surprised the Judge*, was gotten up as an answer to sworn testimony on which Judge Busteed is being tried, and that it will be duly forwarded by Judge Busteed to almost every member of Congress. Except that it is not given under oath, it answers to the Old Bailey device of acquitting the guilty criminal by proving that since he was indicted he has behaved well; and reminds one of the charge of an eminent judge to the jury to the effect that—here is a man, said to have a good character, who is proved to have stolen six pair of stockings.

The reader of the resolution is left in doubt as to whether the proceedings were intended as weak and cheap praise or as cruel sarcasm. The patent sarcasm is conveyed that Judge Busteed, in all his *previous judicial career*, has failed to dispatch the public business with dignity, courtesy, impartiality, or ability, and that he has not *hitherto* won the respect and esteem of the bar, or entitled himself or the court over which he presides, to public confidence.

The Committee and the House will fully understand the value of *such praise*, and the worth of that character which is so upheld.

The proceedings may well be consigned to the "waters of Lethe."

Since the foregoing note was written I am happy to see, in a Huntsville paper, the following card from a worthy and eminent member of the Huntsville bar, and doubt not but many other members of the bar of the Northern District concur with him in views, the propriety of which will strike every reader. R. H. S.

MR. EDITOR—I observe in the *Independent* of Sunday morning, and also in the *Advocate* of yesterday, a resolution which purported to emanate from the Huntsville bar, laudatory of Judge Busteed.

The language of the resolution declares that Judge Busteed, "by the dignity, courtesy, impartiality and ability with which he has dispatched the business of this term, has won the respect and esteem of the bar, and entitled himself and the court over which he presides to the public confidence."

I do not intend to assail Judge Busteed, nor do I propose to controvert the statements contained in the above resolution; if it contains the opinions of the gentlemen of the bar who participated at the meeting, it is their matter, not mine; their opinions, not mine.

My ground of complaint is that, having no notice that a resolution of this character was contemplated, and having no opportunity of assenting or dissenting to the same, I am represented as having, as a member of the bar, assented to it; thus placing me in a position utterly inconsistent with my own views of duty.

Whilst I concede that Judge Busteed's conduct on the bench, at the late term of his court, was in striking contrast with his conduct at each preceding term, and, therefore, was to me, as well as to the members of the bar generally, a most agreeable surprise, I could not feel warranted in endorsing him, on so short a probation, as worthy of the public confidence. Nor could I say that a Judge who, during two terms of his court, by his overbearing manner, had outraged the feelings of the Bar and the community, could, by any possibility, at a succeeding term win my respect and esteem, merely because it suited his purposes to conduct himself with common propriety.

Disclaiming all intention of reflecting upon my brethren of the Bar who may differ with me in this matter, and with no desire to do injustice to Judge Busteed but entertaining as I do the profound conviction that, by his course upon the bench here, he has given no evidence that he merits the high encomium contained in the resolution, candor and a sense of duty to myself compel me thus publicly to declare that, had I been present, I should have dissented from the resolution.

W. W. Garth.

APPENDIX.

INDEX AND BRIEF OF TRANSCRIPTS FROM THE RECORDS OF JUDGE BUSTEED'S COURT IN THE NATCHEZ SALVAGE CASES, WITH EXPLANATORY REMARKS. THE TRANSCRIPTS WERE GIVEN IN EVIDENCE BEFORE THE COMMITTEE IN WASHINGTON, AND ARE FILED WITH THE PROOFS, BUT ARE NOT PRINTED.

This index and brief will aid the committee to understand and refer readily to the transcripts, which are voluminous, and will also tend to show in what unintelligible confusion the records of the court are kept.

THERE ARE EIGHT TRANSCRIPTS

TRANSCRIPT No. 1

Shows the Admiralty docket or calendar of the Natchez cases, *eighteen in number*, (counting the case of Joseph Gray *vs.* 22 bales of cotton,) *and no more.*

Now observe that, though there were but eighteen of these causes on the docket, and these consolidated by Judge Busteed's own decree, see transcript 4, pp. 13, 14, (excepting Gray's case, which was not consolidated,) yet the judge specifically passes upon and allows thirty-two distinct bills of costs, as if there were thirty-two cases. These and other costs were resisted by counsel at the time. See in this connection the multiplication of suits and costs by Judge Busteed, in transcript 4, pages 19, 20, 36, 37, 40 to 69.

TRANSCRIPT No. 2

Contains *all the minutes* of the court relating to the case of JOSEPH GRAY *vs.* 22 BALES OF COTTON.

TRANSCRIPT No. 3

Contains transcripts of papers on file in the case of Joseph Gray *vs.* 22 bales of cotton, which are a part of the record, but not on the minutes, viz:

TRANSCRIPT No. 4

Contains all the *minutes* of the whole proceedings growing in any manner out of the Natchez cases, including the *minutes* relating to the claim filed by Andrews in the name of the United States to 227 bales of the cotton; also, the *minutes* relating to the contest between Price Williams and John H. Garner and the United States, *in the order in which they come on the minutes of the court.* The confusion, which will be observed, arises from the constant practice of entering orders and decrees "*nunc pro tunc*" instead of entering everything day by day, so that suitors and counsel can know what is being done in the courts.

The minutes run thus, viz:

1. An unintelligible entry about some sort of motion—*i. e.* unintelligible until the next "*nunc pro tunc*" entry is read—page 10. (Note—Pages 1 to 10 are taken up with recitals of hearing evidence and reserving decree.)

2. The "*nunc pro tunc*" entry above referred to, of Judge Busteed's refusal to grant a motion to set aside the sale of the Marshal of 454 bales, (which were sold by Judge Busteed's order to satisfy the claim made by Andrews to 227 bales, in the name of the United States,) page 11.

3. Leave given Andrews to file an amended claim for the United States, and leave given to Hamilton (counsel for the underwriters) to file exceptions. Page 12.

4. Hamilton's exceptions overruled and leave given him to file a traverse. Page 13.

5. *Nunc pro tunc* entry of the consolidation of claims, and claimants' application to take the cotton on bond or stipulation. Andrews asserts a claim of the United States to *227 bales* of the cotton, and suggests confusion of property. Judge Busteed orders that *454 bales* of the cotton, *regardless of marks*, be held for this claim of *227* bales, and orders these 454 bales be sold *under Andrews' direction;* proceeds to be paid into court. Claimants are allowed to take the rest of the cotton on bond or stipulation. Pages 14 and 15.

6. Order to retain $15,700 in court, to abide the decree in favor of

the United States, or Price Willlams and Garner, as the case may be, on final decree. Page 18.

Price Williams and Garner, by their shippers, Ingersoll, Wheeler and Wylie, were claimants of part of the cotton seized by Andrews in the name of the United States. This new case comes in singularly and unannounced here. It shows how small a portion of the 227 bales were saved from the Natchez, though Judge Busteed seized double the quantity *shipped by them* on the Natchez.

7. *Gross proceeds* of sale of the cotton ordered to be paid into court. Reference to Commissioner Worrall to report the names of the respective salvors, and to compute the share each is entitled to, according to principles laid down in the Judge's brief of facts, &c.; salvage being computed on net proceeds. Pages 19 and 20.

8. The Judge's brief of facts in thirty-two cases in full. (Note—Here occurs the multiplication of the suits.) Pages 21 to 33.

9. Mr. Secor is ruled to render an account of the sales of the cotton which the claimants were allowed to take on bond or stipulations, and which they sold by their auctioneers, Woodruff & Parker. Page 34.

10. Rule discharged. Pages 35 and 36.

11. The Marshal is allowed to withdraw his bill of charges and file another. Argument thereon. Second bill of charges is allowed, claimants opposing; claimants appeal. Worrall submits thirty-two reports, which are confirmed. Claimants now exhibit charges in their favor, which are disallowed by the court. Pages 36 and 37.

12. *Nunc pro tunc* entry of allowances by the court to the Marshal, which allowances are ordered to be deducted from the gross proceeds of sales of cotton before allowance of salvage; all other costs (including *further charges on the cotton allowed to Marshal Hardy in the 32 bills of costs* hereafter mentioned in transcript No. 6, which observe particularly) are ordered to be paid out of the balance remaining for the claimants.

13. Claimants appeal. Page 40. (Thus is the enormous bill of costs of $10,414 63-100, mentioned in the review, made up.)

14. *Nunc pro tunc* entry, at length, of 32 reports by Worrall. Pages 49 to 69.

15. *Nunc pro tunc* entry of 32 final decrees by Judge Busteed, in which he specially approves Worrall's thirty-two reports, and thirty-two bills of costs in *numero*, in each instance *reciting the amount of each bill of costs in each decree.* (Note that these thirty-two bills of costs are *in addition* to the allowances made to Hardy, the Marshal, out of the gross proceeds, and these thirty-two bills include other fees to Hardy. Let this be kept in mind or the reader will be misled.)

Full transcripts of these 32 itemized bills of costs are on file—see transcript No. 6—and they correspond with the sums allowed by Judge Busteed in his 32 decrees.

Salvage is now allowed in these 32 decrees as per Worrall's 32 reports, and an order is made to retain $15,700 of the money in court,

from the claimants, to abide the result of the contest between the U. S. and Price Williams & Garner, pp. 69 to 101.

Salvage being paid, Hardy and Worrall and Wilson having received their excessive costs and allowances, the conspirators wish to get rid of the claim made by Andrews for the United States to the 227 bales, which has served its purpose of keeping $15,700 in court.

Observe the next entry on the minutes, to this effect, viz:

16. Now come Price Williams and Garner, and move to dismiss the claim of the U. S. to the 227 bales. Page 202.

17. Judge Busteed declares the claim of the U. S. not sustained, and orders the $15,700 paid to claimants, Ingersoll, Wheeler & Wylie. (Note how careful Judge Busteed is to make his decree recite here, that "the District Attorney makes no opposition to the motion to dismiss the case.") Pages 202, 203.

The claim of the U. S. is dismissed, and court adjourns at once, *sine die.* Pages 103, 104.

Observe that although the claim of the U. S. was dismissed, over three thousand dollars of the money was held until the parties agreed to give Andrews half to get it. About one third of it was then kept for cost, and Williams, Garner and McNeill got the remainder for themselves and Andrews—half to Andrews.

TRANSCRIPT NO. 5

Consists of papers *on file* relating to all the cases, except Gray's case; they are not on the *minutes*, but are part of the record and pleading of the cases, viz:

1. Proctor's agreement for claimants to take the cotton on bond or stipulation. Page ½.

(Judge Busteed refuses. See transcript of minutes.)

2. Marks of cotton and affidavit in support of motion to bond.

(Note.—The marks of the cotton were given, pages 1 to 7, by way of refuting practically Andrews' assertion that the marks could not be distinguished, and that there was a confusion of property.)

3. Affidavits *contra.* Page 8 to 10.

4. Andrews' affidavits. Page 10 to 13.

5. Hardy's publication of seizure. Page 13 to 14.

6. Claim of U. S. to 227 bales. Page 15.

7. Claimants' exceptions (by Hamiltons, attorneys). Page 17.

(Overruled by Judge Busteed. See transcript of minutes.)

8. Amended claim and answer of the U. S. Page 20.

9. Claimants' exceptions (by Hamiltons, attorneys). Page 24.

10. Affidavits filed by Hamiltons, proctors for claimants, in support of motion to set aside the sale of 454 bales by marshal Hardy, for fraud, &c. Page 28 to 34.

11. *Venditioni exponas.* Page 34.

12. Return thereto. Page 35.

13. Notice to parties of motion to set aside sale. Pages 43 to 47. (Note—We have seen heretofore that Judge Busteed refused to set aside the sale.)

14. Proctor's consent for the cotton to be bonded. Page 49.

15. Judge Busteed's order allowing *part* of the cotton to be bonded. Page 50.

16. Account of sales by Woodruff & Parker produced, in obedience to rule *nisi* vs. Secor. Page 51.

17. Secor's answer to rule *nisi*. Page 52.

TRANSCRIPT No. 6

Contains thirty-two itemized bills of costs, respectively *approved by Judge Busteed's* thirty-two decrees; each of which decree recites the amount of its corresponding bill of costs in *numero*. See transcript of minutes for the thirty-two decrees. The original of each of these thirty-two decrees is on file among the records of the court in Mobile, with Judge Busteed's own signature to each one. *Each of these bills contain a charge for the Marshal for keeping the cotton, and this charge is in addition to the large sums* allowed him by Judge Busteed out of the gross proceeds of the sale.

See the transcript of minutes No. 4, page 40. Compare these bills of costs with the act of Congress.

That act encourages consolidation of suits, and punishes attorneys who fail to consolidate and thus bring costs on their clients.

Observe:

1. That Hardy is allowed for 32 seizures and monitions, when there were in fact only 18, counting Gray's case. See transcript No. 7, of 17 seizures and monitions, and transcript No. 2, of one seizure and monition, in Gray's case, having the marshal's return endorsed on each.

2. Worrall is allowed for 32 stipulations, and, indeed, for even more.

3. Worrall is allowed for 32 final records which cannot now be found anywhere on the records of the court.

4. Worrall is allowed $10 for each one of his 32 reports, requiring only a simple computation of the amount due to each salvor under given rules. One short report would have covered the whole ground fully, the cases having been consolidated and there being in fact only 18 cases.

5. The large allowances to various persons, and glaringly excessive costs allowed and maintained by the Judge, can only be fully understood by examining—1st, The 32 bills of costs; 2d, The allowances to Hardy; 3d, Hardy's account of sales of cotton, and his vouchers for expenses thereof, where it will be seen that Wilson gets his full share also; 4th, Those transcripts relating to claimants' efforts to set aside the sale made by Hardy.

TRANSCRIPT No. 7

Contains 17 writs of seizure and 17 monitions, with Hardy's returns endorsed thereon. For seizure and monition in Gray's case, see transcript No. 3, pages 5 and 6.

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Final record of Price Willi gai
Mallory and Thos, Eldridge,